ALL THE

PROCEEDINGS

In RELATION to the

AYLESBURY-MEN,

Committed by the

Houſe of Commons, &c.

PROCEEDINGS

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ALL THE PROCEEDINGS

In RELATION to the

AYLESBURY-MEN,

Committed by the

House of Commons:

AND THE

REPORT

OF THE

Lords Journal,

AND

REPORTS

OF THE

CONFERENCES,

AND OF

The Free Conference.

Together with what ſtands upon the *Journal* of the HOUSE of COMMONS, in the Reign of King *JAMES* I. in the CASE between Sir *Francis Goodwin* and Sir *John Forteſcue*.

LONDON,

Printed for *Edward Jones* in the *Savoy*, and *Timothy Goodwin* at the *Queen's-Head* againſt *St. Dunſtan's* Church in *Fleetſtreet*, 1704.

Martis 1 die Martii, 1704.

Ordered,

THat all the Proceedings in relation to the Aylesbury-Men Committed by this House, and the Report of the Lords Journal, and Reports of the Conferences, and of the Free Conference, be Printed.

Ordered,

That Mr. Speaker do appoint the Printer of the said Proceedings and Reports.

Paul Jodrell,
Cl. Dom. Com.

Mercurii 14 die Martii, 1704.

Ordered,

THat what stands upon the Journal of this House, of King James I. in the Case between Sir Francis Goodwin and Sir John Fortescue, be Printed; and that Mr. Speaker do appoint the Printing thereof.

Paul Jodrell,
Cl. Dom. Com.

ALL THE PROCEEDINGS

In RELATION to the

AYLESBURY-MEN,

Committed by the

Houſe of Commons, &c.

Martis 21 *die Novembris*, 1704.

A Complaint being made to the Houſe, That *Robert Mead*, an Attorney at Law, had Proceeded in the Cauſe of *Aſhby* and *White*, and others, ſince the laſt Seſſion of Parliament, and taken the Defendants in Execution in Breach of the Privilege of this Houſe.

Ordered,

That the Matter of the ſaid Complaint be heard at the Bar of this Houſe upon *Thurſday* Morning next.

Ordered,

That the ſaid *Robert Mead* do attend this Houſe upon *Thurſday* Morning next.

Jovis 23 *die Novembris* 1704.

THe Order of the Day being read for the hearing the Matter of the Complaint againſt *Robert Mead*, an Attorney at Law, for having proceeded in the Cauſe of *Aſhby* and *White*, and others, ſince the laſt Seſſion of Parliament, and taken the Defendants in Execution in Breach of the Priviledge of this Houſe:

Ordered,

That the hearing the Matter of the ſaid Complaint be Adjourned until *Tueſday* Sevenight.

Ordered,

That the ſaid *Robert Mead* do attend this Houſe upon *Tueſday* Sevenight.

A further Complaint being made to the Houſe, That ſince the Reſolutions of this Houſe the laſt Seſſion upon the Caſe of *Aſhby* and *White*, there had been ſeveral new Actions brought by *John Paty*, *John Oviat*, *John Paton* Junior, and *Henry Baſſe*, and Proſecuted by the ſaid *Robert Mead*, againſt the Conſtables of *Aylesbury*, in Breach of the Privilege of this Houſe:

Ordered,

That the Matter of the ſaid Complaint be alſo heard at the Bar of this Houſe upon *Tueſday* Sevenight.

Ordered,

That the ſaid *John Paty*, *John Oviat*, *John Paton* Junior, and *Henry Baſſe*, do attend this Houſe upon *Tueſday* Sevenight.

Ordered,

That Copies of the Original Declarations in the ſaid Actions be laid before this Houſe.

Veneris 24 die Novembris, 1704.

Ordered,

THat *Daniel Horne*, a Plaintiff in one of the Actions brought againſt the Conſtables of *Aylesbury*, of which Complaint was made to the Houſe yeſterday, do attend this Houſe upon *Teuſday* Sevenight.

Martis 5 die Decembris, 1704.

THe Orders of the Day being read for the hearing the Matter of the Complaints of ſeveral Breaches of Priviledge committed by *Robert Mead*, *John Paty*, *John Oviat*, *John Paton* Junior, *Henry Baſſe*, and *Daniel Horne*, and for their attending this Houſe: The Serjeant at Arms was called upon, to give an Account of what had been done for the Summoning of them; And he acquainted the Houſe, That his Meſſenger had been at *Aylesbury*, and left a Copy of the Order at Mr. *Mead*'s Houſe, and at his Chamber in *Thavies-Inn*, but that he does not attend; but that all the other Perſons had been Summoned, and do attend.

And thereupon Mr. *Arthur Crabb* was called for, and brought in with the Mace to the Bar; who ſaid:

That he was Attorney for the late Conſtables of *Aylesbury* in Five ſeveral Actions at the ſeveral Suits of *John Paty*, *John Oviat*, *John Paton* Junior, *Henry Baſſe*, and *Daniel Horne*: And that he did Serve Mr. *Robert Mead*, the 6th of *March* laſt, with the Reſolutions of this Houſe of the laſt Seſſion of Parliament, relating to the Proceedings

ceedings in the Cauſe of *Aſhby* and *White*, and others, by giving him a Copy thereof, and ſhewing him the Reſolutions ſigned by the Clerk of this Houſe; And that he afterwards, *viz.* the 10th of *June* laſt, had from Mr. *Mead* Copies of Five Declarations in the ſaid Actions, *viz.* One from Mr. *Mead* himſelf, and the other Four left at his Houſe, which Mr. *Mead* afterwards owned, and that he paid Mr. *Mead* for them all.

Which Copies of Declarations the ſaid Mr. *Crabb* produced to the Houſe, together with Notice in Writing from the ſaid Mr. *Mead*, the 22th of *July* laſt, That he would try one of the ſaid Actions, but not the other four, at the then next Aſſizes.

And then he withdrew.

And the Notice was read.

And the Copy of the Declaration between *Paty* and *White & al'* was alſo read; and is as followeth.

Paſchæ Anno Tertio Annæ Reginæ.

Bucks ſſ. JOhanes Paty queritur de Will'o White Ric'o Talboys Will'o Bell & Ricardo Heydon in Cuſtod' Mar' &c. pro eo viz. quod cum viceſimo ſexto die Decembris Anno Regni Dom' Williel' Tertij nuper Regis Ang' &c. duodecimo e Cur' Cancellar' ipſius nuper Regis apud Weſtm' in Com' Mid' emanavit quoddam Breve ipſius nuper Regis tunc Vic' Com' Bucks pred' direct' recitando quod dict' nuper Rex de adviſamento & aſſenſu Conſilij ſui pro quibuſdam arduis & urgentibus negotijs eund' nuper Regem Statum & Defenſionem Regni ſui Ang' & Eccleſie Anglicane concernen' quoddam Parliamentum ſuum apud Civitat' ſuam Weſtm' ſexto die Februarij tunc prox' futur' teneri ordinavit & ibidem cum Prelatis Magnatibus & Proceribus dicti Regni ſui colloquium habere & tractatum Idem nuper Rex eidem tunc Vic' Com' Bucks predict' Breve precepit firmiter injungend' quod facta Proclamatione in prox' Com' ſuo poſt reception' ejuſd' Brevis tenend' de die & loco predict' duos Milites Gladijs cinctos magis idoneos & diſcretos Com' pred' & de qualibet Civitate Com' illius duos Cives & de quolibet Burgo duos Burgenſes de diſcretioribus & magis ſufficien' libere & indifferenter per illos qui hujuſmodi Proclamation' interforent juxta form' Statut' inde edit' & proviſ. eligi & nomina eorundem Militum Civium & Burgenſium ſic eligend' in quibuſdam Indentur' inter ipſum tunc Vic' & illos qui hujuſmodi Election' interforent inde conficiend' licet hujuſmodi eligend' preſentes forent vel abſentes inſeri eoſq; ad dictos diem & locum venire faceret Ita quod ijdem Milites plenam & ſufficien' Poteſtatem pro ſe & Communitate Com' illius ac dicti Cives & Burgenſes pro ſe & Communitate Civitat' & Burgor' pred' diviſim ab ipſis haber' ad faciend' & conſentiend' hijs que tunc ibidem de Communi Concil' dicti Regni ipſius nuper Regis (favente Deo) contigerent ordinari ſuper negotijs antedictis Ita quod pro defectu poteſtat' hujuſmodi ſeu propter improvidam Election' Militum Civum aut Burgenſium pred' dicta negotia infecta non remanerent quoviſmodo & Election' i'l' in plen' Com' ipſius tunc Vic' fact' diſtincte & aperte ſub Sigillo ſuo & Sigillis eorum qui Election' ill' interforent eidem nuper Regi in tunc Cacellar' ſua ad dict' diem & locum certificaret indilate remitten' eidem nuper Regi alteram partem Indentur' pred' eidem Brevi cons' una cum Brevi illo Quod quidem Breve poſtea & ante predictum ſextum diem Febr' in Brevi pred' mentionat' ſcil' viceſimo nono die Decemb' Anno duodecimo ſup'dicto apud Burgum de Aylesbury in dicto Com' Bucks cuidam Roberto Weedon Arm' adtunc Vic' ejuſd' Com' Bucks deliberat' fuit in forma Juris exequend' Virtute cujus quidem Brevis predictus Robertus Weedon Vic' Com' Bucks pred' ut prefertur

tunc & ibidem exiſten' poſtea & ante predict' ſextum diem Februar' ſcil' tri-ceſimo die Decemb' Anno duodecimo ſup'dicto apud Burgum de Aylesbury pred' in dicto Com' Bucks fecit quoddam preceptum ſuum in Scriptis ſub Sigillo ipſius Roberti Weedon Officij ſui Vic' Com' Bucks pred' Conſtabular' Burgi de Aylesbury pred' direct' (recitand' diem & locum Parliamenti pred' tenend') perinde eos requiren' & eis in mandato dans quod facta Proclamatione infra Burg' pred' de die & loco in eodem Precepto recitat' cauſarent libere & indifferenter eligi duos Burgenſes Burgi ill' de diſcretioribus & magis ſufficien' per ipſos qui hujuſmodi Proclamatione interforent juxta form' Statut' in talib' caſub' edit & provis' & nom' dictor' Burgens' ſic elect' licet preſentes forent vel abſentes inſeri in quibuſd' Indentur' inter dictum Vic' & illos qui haberent intereſſe in hujuſm' Election' & quod eos venire facerent ad diem & locum in eodem precept' recitat' Ita quod dicti Burgenſes haberent plen' & ſufficien' poteſtat' pro ſe & Communitate Burgi pred' ad faciend' & conſentiend' ijs que tunc ibidem de com' Concilio dicti Regni (favente Deo) contigerent ordinari ſup' negotiis antedict' Ita quod pro defectu hujuſmodi poteſtat' aut propter improvidam Election' Burgenſium pred' dicta negotia infecta non remaner' Et quod Election' indilate eidem tunc Vic' certificarent mittend' eidem Vic' alteram partem Indentur' predict' Precept' annex' ut idem Vic' eandem certificaret dicto nup' Regi in Cancellar' ſua ad diem & locum predict' Quod quidem Preceptum poſtea & ante predict' ſextum diem Februarij ſcil' eodem triceſimo die Decemb' Anno duodecimo ſup'dict' apud Burgum de Aylesbury pred' in dicto Com Bucks eiſdem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon adtunc & uſque ad & poſt retorn' ejuſdem Brevis Conſtabular' Burgi de Aylesbury predict' exiſten' in forma Juris exequend' deliberat' fuit quibus quidem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon ratione Officij ſui pred' Conſtabular' Burgi pred' executio Precepti ill' de jure adtunc & ibid' pertinuit Virtute cujus quidem Precepti ac Vigore Brevis pred' Burgenſes Burgi pred' exiſten' in ea parte debite premoniti poſtea & ante predict' ſextum diem Februarij ſcil' ſexto die Jan' Anno duodecimo ſup'dicto apud Burgum de Aylesbury pred' coram eiſdem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon Conſtabular' Burgi predict' aſſemblat' fuer' ad duos Burgenſes pro Burgo ill' eligend' ſecund' exigentiam Brevis & Precepti pred' ac duran' aſſemblation' ill' ad intention' ill' & antequam hujuſmodi duo Burgenſes Virtute Brevis & Precepti pred' electi fuer' ſcil' die & Anno ult' ſup'dict' apud Burg' de Aylesbury pred' in Com' pred' idem Johanes Paty adtunc & ibidem exiſten' Burgen' & Inhabitan' Burgi predict' & Eleemozinas ibidem non recipien' ſed debite qualificat' & intitulat' exiſten' ad ſuffragium ſuum ad eligend' duos Burgenſes pro Burgo pred' ſecundum exigentiam Brevis & Precepti pred' dand' coram eiſdem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon quatuor Conſtabular' Burgi ill' quibus tunc & ibidem debite pertinuit ad Suffragium ipſius Johanis Paty de & in premiſſis capiend' & allocand' parat' fuit & obtulit ſuffragium ſuum dare pro eligend' Thomam Lee Bar' & Simon Mayne Ar' duos Burgenſes pro Parliamento ill' Virtute & ſecundum exigentiam Brevis & Precepti pred' ac ſuffragium ipſius Johanis Paty adtunc & ibidem de jure debuit admitti & pred Will'us White Ric'us Talboys Will'us Bell & Ric'us Heydon ſic Conſtabular' Burgi pred' tunc & ibidem exiſten' adtunc & ibidem requiſit' fuer' per ipſum Johan' Paty ad ſuffragium ipſius Johan' Paty pred' in premiſſis recipiend' & allocand' ijdem tamen Will'us White Ric'us Talboys Will'us Bell & Ric'us Heydon adtunc & ibidem ut prefertur Conſtabular' Burgi pred' exiſten' premiſſorum non ignari ſed machinan' & fraudulent' & malitioſe intenden' eundem Johan' Paty in hac parte dampnificare & de Privilegio ſuo de & in premiſſis pred' impedire & totalit' fruſtrare eundem Johan' Paty ſuffragium ſuum in ea parte dare adtunc & ibidem obſtruxer' & adtunc & ibidem penitus recuſaver' ad eundem Johan' Paty ſuffragium ſuum pro eligend'

gend' duos Burgenſes pro Burgo ill' ad Parliament' pred' dare permittend' ac ſuffragium ipſius Johanis Paty pro Electione ill' non receper' neq; allocaver' Ac duo Burgenſes de Burgo ill' pro Parliament' pred' (predicto Johane Paty ſic ut prefertur exclus') ſine aliquo ſuffragio ipſius Johanis Paty adtunc & ibidem Virtute Brevis & precepti pred' electi fuer' in enervation' pred' Privileg' pred' Johanis Paty de & in premiſſis pred'. Unde idem Johanes Paty dicit quod ipſe deteriorat' eſt & dampnum habet ad valentiam ducentar' lib' ac inde producit Sectam &c.

J. Tomſon pro Quer.
Crab per Ja. Cloſe pro Def. } Pleg' &c.

The other Declarations were :

Johannes Oviat,
Johannes Paton Jun.
Henry Baſſe,
Daniel Horne,
} *Verſus* {
Thoma' Ray & al'
Conſtabular' Burgi
de Aylesbury.

And, *Mutatis Mutandis*, were the ſame with the former Declaration againſt *White* and others.

Then the ſaid *John Paty*, *John Oviat*, *John Paton* Junior, *Henry Baſſe*, and *Daniel Horne*, were ſeverally called in to the Bar, and Examined, and then withdrew.

Reſolved,

That it appears to this Houſe, That *John Paty* of *Aylesbury* has been Guilty of Commencing and Proſecuting an Action at Common-Law againſt *William White*, and others, late Conſtables of *Aylesbury*, for not allowing his Vote in the Election of Members to Serve in Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.

Reſolved,

That it appears to this Houſe, That *John Oviat* of *Aylesbury* has been guilty of Commencing and Proſecuting an Action at Common Law againſt the late Conſtables of *Aylesbury*, for not allowing his Vote in the Election of Members to Serve in Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Priveleges of this Houſe.

Reſolved,

That it appears to this Houſe, That *John Paton* Junior of *Aylesbury* has been guilty of Commencing and Proſecuting an Action at Common Law againſt the late Conſtables of *Aylesbury*, for not allowing his Vote in the Election of Members to Serve in Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.

Reſolved,

That it appears to this Houſe, That *Henry Baſſe* of *Aylesbury* has been guilty of Commencing and Proſecuting an Action at Common Law againſt the late Conſtables of *Aylesbury*, for not allowing his Vote in the Election of Members to Serve in Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.

Reſolved,

That it appears to this Houſe, That *Daniel Horne* of *Aylesbury* has been guilty of Commencing and Proſecuting an Action at Common Law againſt the late Conſtables of *Aylesbury*, for not allowing his Vote in the Election of Members to Serve in Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.

Reſolved,

That it appears to this Houſe, That *Robert Mead* has been guilty of Solliciting and Proſecuting (as Attorney at Law) divers Actions at Common Law againſt *William White* and others, late Conſtables of *Aylesbury*, for not allowing divers Votes in the Election of Members to Serve in Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the Privileges of this Houſe.

Ordered,

That the ſaid *John Paty* be, for his ſaid Offence, committed Priſoner to Her Majeſty's Goal of *Newgate*; and that Mr. Speaker do iſſue his Warrant accordingly.

Ordered,

That the ſaid *John Oviat* be, for his ſaid Offence, committed Priſoner to Her Majeſty's Goal of *Newgate*; and that Mr. Speaker do iſſue his Warrant accordingly.

Ordered,

That the ſaid *John Paton* Junior be, for his ſaid Offence, committed Priſoner to Her Majeſty's Goal of *Newgate*; and that Mr. Speaker do iſſue his Warrant accordingly.

Ordered,

That the ſaid *Henry Eaſſe* be, for his ſaid Offence, committed Priſoner to Her Majeſty's Goal of *Newgate*; and that Mr. Speaker do iſſue his Warrant accordingly.

Ordered,

That the ſaid *Daniel Horne* be, for his ſaid Offence, committed Priſoner to Her Majeſty's Goal of *Newgate*; and that Mr. Speaker do iſſue his Warrant accordingly.

Ordered,

Ordered,
That the Serjeant at Arms attending this Houſe do take care that the ſaid Warrants be executed.

Ordered,
That the ſaid Mr. *Robert Mead* be, for his ſaid Offence, taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

Jovis 1 *die Februarii*, 1704.

Ordered,
THat the Keeper of *Newgate* do to morrow Morning bring to this Houſe, *John Paty*, *John Oviat*, *John Paton* Jun. *Henry Baſſe*, and *Daniel Horne*, committed by this Houſe; and that Mr. Speaker do iſſue his Warrant or Warrants accordingly.

Veneris 2 *die Februarii*, 1704.

THe Houſe being informed, That the Keeper of *Newgate* attended (according to Order) with *John Paty*, *John Oviat*, *John Paton* Junior, *Henry Baſſe*, and *Daniel Horne*, committed by this Houſe, ſeveral of them were ſeverally called in, and Examined, and then withdrew.

And alſo the Keeper and his Clerk, and Turnkey, and one *Edward Hill*, were called in, and examined, and then withdrew.

Ordered,
That the ſaid *John Paty*, *John Oviat*, *John Paton* Jun. *Henry Baſſe*, and *Daniel Horne*, be remanded Priſoners to Her Majeſty's Priſon of *Newgate*; and that Mr. Speaker do iſſue his Warrants accordingly.

Sabbati

Sabbati 24 die Februarii, 1704.

THE Houſe being informed, That there have been endeavours to bring a Writ of Error on the Proceedings in the Court of *Queen's-Bench*, upon a *Habeas Corpus* granted there for the Perſons committed by this Houſe to *Newgate* for Breach of their Privilege, and thereby to bring the Commitments of this Houſe under the Examination of the Houſe of Peers:

Reſolved,

That an humble Addreſs be preſented to Her Majeſty, humbly to lay before Her Majeſty the Undoubted Right and Privilege of the Commons of *England*, in Parliament Aſſembled, to commit for Breach of Privilege; and that the Commitments of this Houſe are not Examinable in any other Court whatſoever: And that no ſuch Writ of Error was ever brought, nor doth any Writ of Error lie in this Caſe. And that as this Houſe hath expreſſed their Duty to Her Majeſty, in giving Diſpatch to all the Supplies, ſo they have an entire Confidence in Her Majeſty's Goodneſs and Juſtice, That She will not give Leave for the bringing any Writ of Error in this Caſe; which will tend to the Overthrowing the Undoubted Rights and Privileges of the Commons of *England*.

Ordered,

That the ſaid Addreſs be preſented to Her Majeſty by ſuch Members of this Houſe as are of Her Majeſty's moſt Honourable Privy Council.

Reſolved,

That whoever has Abetted, Promoted, Countenanced, or Aſſiſted the Proſecution of the ſeveral Writs of *Habeas Corpus*, brought for the Priſoners committed by this Houſe, and ſince their being remanded have endeavoured the procuring Writs of Error, are guilty of Conſpiring to make a Difference between the Lords and Commons in Parliament Aſſembled, are Diſturbers of the Peace of the Kingdom, and have endeavoured, as far as in them lay, to Overthrow the Rights and Privileges of the Commons of *England* in Parliament Aſſembled.

Ordered,

That a Committee be appointed to examine what Perſons have been concerned in Solliciting, Proſecuting, or Pleading, upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Perſons committed to *Newgate* for Breach of the Privilege of this Houſe; or what other Perſons have Promoted or Abetted the ſame.

And a Committee was accordingly appointed; and that they do meet this Afternoon as ſoon as the Houſe is riſen, in the Speaker's Chamber, and have Power to ſend for Perſons, Papers and Records; and to Sit *de Die in Diem*.

Lunæ

Lunæ 26 die Februarii, 1704.

MR. Secretary *Hedges* acquainted the Houſe, That their Addreſs of *Saturday* laſt, in relation to the Writs of Error, therein mentioned, having been preſented to Her Majeſty, according to Order, Her Majeſty was pleaſed to give this Gracious Anſwer, *viz.*

HER *Majeſty is much troubled to find the* Houſe of Commons *of Opinion, That Her granting the Writs of Error, mentioned in their Addreſs, is againſt their Privileges, of which Her Majeſty will always be as tender as of Her Own Prerogative; And therefore the* Houſe of Commons *may depend, Her Majeſty will not do any thing to give them any Juſt Occaſion of Complaint: But this Matter, relating to the Courſe of Judicial Proceedings, being of the Higheſt Importance, Her Majeſty thinks it Neceſſary to weigh and conſider very Carefully what may be proper for Her to do in a thing of ſo great Concern.*

Reſolved, That this Houſe will take Her Majeſty's Gracious Anſwer into Conſideration to morrow Morning.

The Earl of *Dyſert* reported from the Committee appointed to examine what Perſons have been concerned in Solliciting, Proſecuting, or Pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Perſons committed to *Newgate* for Breach of the Privileges of this Houſe, or what other Perſons have Promoted or Abetted the ſame, the Matter as it appeared to them; which they had directed him to report to the Houſe, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame was read, and is as followeth.

Upon the Examination of ſeveral Perſons, it appeared to the Committee, That Mr. *Alexander Denton* moved in the Court of *Queen's Bench* for the Writs of *Habeas Corpus*, on behalf of the Perſons committed to *Newgate* for Breach of the Privileges of this Houſe.

That Mr. Serjeant *Hook* moved in the Court of *Queen's Bench*, to ſhorten the Day for the Return of the ſaid Writs.

That Mr. *Francis Page*, Mr. *James Mountague*, Mr. *Nicholas Lechmere*, and Mr. *Alexander Denton*, pleaded on the Returns of the ſaid Writs.

That Mr. *James Mountague* and Mr. *Nicholas Lechmere* attended as Counſel at the Lord Chief Juſtice *Holt*'s Chamber, to conſider what Entry ſhould be made of the *Remittitur*.

Hollingshead, a Meſſenger attending this Houſe, informed the Committee, That he endeavoured to ſerve the Summons upon Mr. *Lee* of *Clement's Inn*; but not meeting with him, he ſhewed his Clerk the Original Order of Summons, which his Clerk refuſed to read; thereupon he offered him a Copy of it, which he refuſed to receive: However he left the Copy in Mr. *Lee*'s Chamber.

Kingham, another Meſſenger, informed the Committee, He had perſonally ſerved *Harris* with the Order of Summons, and he ſaid he would attend: But neither *Lee* nor *Harris* attended the Committee according to the Summons of the Committee.

Reſolved, That it appears to this Houſe, That Mr. *Lee*, of *Clement's Inn*, having been Summoned to attend a Committee of this Houſe, and not attending thereupon, is guilty of a Contempt and Breach of the Privilege of this Houſe.

Ordered, That the ſaid Mr. *Lee* be, for his ſaid Contempt and Breach of Privilege, taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

Reſolved, That it appears to this Houſe, That *Harris* having been Summoned to attend a Committee of this Houſe, and not attending thereupon, is guilty of a Contempt and Breach of the Privilege of this Houſe.

Ordered, That the ſaid *Harris* be, for his ſaid Contempt and Breach of Privilege, taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

A Motion being made, and the Queſtion being put, That the farther Conſideration of the ſaid Report be Adjourned till to Morrow Morning?

It paſſed in the Negative.

Then a Debate ariſing upon the ſaid Report, and the Time being come for the Houſe to attend Her Majeſty, as ſhe had appointed, with an Addreſs:

Reſolved, That the Debate be Adjourned.

Reſolved, That the Debate be Adjourned till Six a Clock this Evening.

Poſt Meridiem.

THE Houſe reſumed the Adjourned Debate upon the Report from the Committee appointed to examine what Perſons have been concerned in Solliciting, Proſecuting, or Pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Perſons committed to *Newgate* for Breach of the Privilege of this Houſe; or what other Perſons have Promoted or Abetted the ſame.

Reſolved, That Mr. *Francis Page*, in Pleading upon the Return of the *Habeas Corpus*, on behalf of the Priſoners committed by this Houſe, is guilty of a Breach of the Privilege of this Houſe.

Ordered,

Ordered, That the ſaid Mr. *Francis Page* be, for the ſaid Breach of Privilege, taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

Reſolved, That Mr. *James Mountague*, in Pleading upon the Return of the *Habeas Corpus*, on the behalf of the Priſoners committed by this Houſe, is guilty of a Breach of the Privilege of this Houſe.

Ordered, That the ſaid Mr. *James Mountague* be, for the ſaid Breach of Privilege, taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

Reſolved, That Mr. *Nicholas Lechmere*, in Pleading upon the Return of the *Habeas Corpus*, on the behalf of the Priſoners committed by this Houſe, is guilty of a Breach of the Privilege of this Houſe.

Ordered, That the ſaid Mr. *Nicholas Lechmere* be, for the ſaid Breach of Privilege, taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

Reſolved, That Mr. *Alexander Denton*, in Pleading upon the Return of the *Habeas Corpus*, on the behalf of the Priſoners committed by this Houſe, is guilty of a Breach of the Privilege of this Houſe.

Ordered, That the ſaid Mr. *Alexander Denton* be, for the ſaid Breach of Privilege, taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

Ordered, That *John Paty*, Priſoner in *Newgate* by Order of this Houſe, for a Breach of the Privilege of this Houſe, be diſcharged from his ſaid Confinement there, and immediaiely removed and delivered over into the Cuſtody of the Serjeant at Arms attending this Houſe.

Ordered, That *John Oviat*, Priſoner in *Newgate* by Order of this Houſe, for a Breach of the Privilege of this Houſe, be diſcharged from his ſaid Confinement there, and immediately removed and delivered over into the Cuſtody of the Serjeant at Arms attending this Houſe.

Ordered, That *John Paton*, Junior, Priſoner in *Newgate* by Order of this Houſe, for a Breach of the Privilege of this Houſe, be diſcharged from his ſaid Confinement there, and immediately removed and delivered over into the Cuſtody of the Serjeant at Arms attending this Houſe.

Ordered, That *Henry Baſſe*, Priſoner in *Newgate* by Order of this Houſe, for a Breach of the Privilege of this Houſe, be diſcharged from his ſaid Confinement there, and immediately removed and delivered over into the Cuſtody of the Serjeant at Arms attending this Houſe.

Ordered, That *Daniel Horne*, Priſoner in *Newgate* by Order of this Houſe, for a Breach of the Privilege of this Houſe, be diſcharged from his ſaid Confinement there, and immediately removed and delivered over into the Cuſtody of the Serjeant at Arms attending this Houſe.

Ordered,

Ordered, That Mr. Speaker do iſſue his Warrants for the Removal and Delivery over of the ſaid *John Paty*, *John Oviat*, *John Paton* Junior, *Henry Baſſe*, and *Daniel Horne*, into the Cuſtody of the Serjeant at Atms attending this Houſe.

Martis 27 die February, 1704.

THE Houſe calling upon the Serjeant to give an Account what he had done in Execution of the Orders of this Houſe made yeſterday;

He gave the Houſe an Account thereof accordingly, as followeth, *viz.*

That he had received into his Cuſtody the Five Perſons which were committed to *Newgate* this Morning, and had found Mr. *James Mountague* at his own Houſe, and taken him into his Cuſtody; but that he ſhewed a Protection from the Houſe of Lords, upon the Petition of the ſaid Perſons, by which the ſaid Mr. *Mountague* and Mr. *Page*, Mr. *Lechmere* and Mr. *Denton*, and *William Lee* and *John Harris*, (who were Yeſterday ordered to be taken into Cuſtody) were aſſigned Counſel and Attorneys for the ſaid Perſons, and Protected by the Houſe of Lords; and that all Officers, Serjeants at Arms, and other Perſons, were thereby forbid to meddle with them; with which the Serjeant told Mr. *Mountague* he would acquaint this Houſe.

That he had alſo like to have taken Mr. *Nicholas Lechmere*, but that he got out of his Chamber in the *Temple*, two Pair of Stairs high, at the back Windore, by the help of his Sheets and a Rope; and that the ſaid *Harris* was alſo taken into Cuſtody; but that Mr. *Page* and Mr. *Denton* and Mr. *Lee* were not then found.

Ordered, That ſome Members be appointed to Search the Journals of the Houſe of Lords, what Proceedings have been in that Houſe, in relation to the Five Perſons committed to *Newgate* for Breach of the Privilege of this Houſe; and report the ſame to the Houſe.

And ſome Members were appointed accordingly.

The Orders of the Day being read.

Ordered, That the Conſideration of Her Majeſty's Gracious Anſwer to the Addreſs of this Houſe of *Saturday* laſt, relating to the Writs of Error therein mentioned, be Adjourned till to morrow Morning.

Mercurii 28 die Februarii, 1704.

MR. *Bromley* reported, That the Members appointed to Search the Journals of the Houſe of Lords, what Proceedings have been in that Houſe, in relation to the Five Perſons

ſons committed to *Newgate* for Breach of the Privilege of this Houſe, had ſearched the ſame accordingly, and had taken thereout what they found relating to the ſame; and alſo Copies of Two Petitions of the ſaid Perſons; which he read in his Place, and afterwards delivered in at the Table, where the ſame were read, and are as folllow, *viz.*

Die Lunæ 26 Februarii, 1704.

UPon reading the Petition of *Daniel Horne*, *Henry Baſs* and *John Paton* Jun. as alſo the Petition of *John Paty* and *John Oviat*, Priſoners in *Newgate*, in relation to ſome Proceedings for obtaining the Writs of Error, and praying (amongſt other things) the Protection of this Houſe for their Counſel and Agents:

It is Ordered by the Lords Spiritual and Temporal, in Parliament aſſembled, That the ſaid Petitions ſhall be taken into Conſideration to Morrow at Twelve a Clock, and all the Lords Summoned to attend; as alſo the Judges in Town, who are to come prepared to ſpeak to the Point, whether a Writ of Error be a Writ of Right, or a Writ of Grace; and that the Petitioners have notice, That when they ſend to this Houſe the Names of their Counſel and Agents they deſire to be Protected, they ſhall have the Protection of this Houſe for them.

In purſuance of the Order of this Day made, *Daniel Horne*, *Henry Baſs*, *John Paton* Jun. *John Paty* and *John Oviat*, Priſoners in *Newgate*, ſent the Names of their Counſel and Agents, *viz.*

James Mountague Eſq;	}	Councellors at Law.
Nicholas Letchmere.		
Alexander Denton.		
Francis Page.		
William Lee.	}	Attorneys at Law.
John Harris.		

Whereupon,

It is Ordered by the the Lords Spiritual and Temporal in Parliament aſſembled, That *James Mountague* Eſq; *Nicholas Letchmere*, *Alexander Denton* and *Francis Page*, Counſellors at Law, and *William Lee* and *John Harris*, Attornies at Law, ſhall, and they have hereby the Protection and Privilege of this Houſe, in the Adviſing, Applying for, and Proſecuting the ſaid Writs of Error; and that all Keepers of Priſons and Gaolers, and all Serjeants at Arms and other Perſons whatſoever, be, and they are hereby (for, or in reſpect of any the Cauſes aforeſaid) ſtrictly prohibited from Arreſting, Impriſoning, or otherwiſe Detaining or Moleſting, or Charging the ſaid *James Mountague*, *Nicholas Letchmere*, *Alexander Denton*, *Francis Page*, *William Lee* and *John Harris*, or any, or either of them; as they and every of them will Anſwer the Contrary to this Houſe.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled.

The humble Petition of Daniel Horne, Henry Bass, *and* John Paton *Jun.*

SHEWETH,

THat your Petitioners having a Right to Vote at the Election of Members to Serve in Parliament for the Borough of *Aylesbury*, were refused their Votes, to their great Wrong and Damage.

That the Lords having given Judgment in the Case of *Ashby* and *White*, *viz.* That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to Serve in Parliament, and being wilfully denied or hindred so to do by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts against such Officer, to assert his Right, and recover Damages for the Injury; your Petitioners thereupon brought the like Actions in their own Cases.

That they have for so doing been Committed to *Newgate*, by Virtue of a Warrant from the Speaker of the House of Commons.

That your Petitioners have endeavoured to obtain their Liberty by such Legal Methods as by their Counsel they have been advised, without Success; so that they have been deprived of their Liberty for about Twelve Weeks, for no other Reason, but the endeavouring to pursue their Legal Remedies according to the Judgment of this Honourable House.

Wherefore your Petitioners humbly beseech your Lordships to take the Premisses into Consideration, and to do therein as to your great Wisdoms you shall think fit.

And your Petitioners, as in Duty bound, shall ever pray, &c.

Daniel Horne.
Henry Bass.
John Paton, *Jun.*
His + *Mark.*

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled.

The humble Petition of John Paty, *and* John Oviat.

SHEWETH,

THat your Petitioners having Right to Vote at the Election of Members to Serve in Parliament for the Borough of *Aylesbury*, were refused their Votes, to their great wrong and damage.

That the Lords having given Judgment in the Case of *Ashby* and *White*, *viz.* That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to Serve in Parliament, and being wilfully denied or hindred so to do by the Officer who ought to receive the same,

ſame, may maintain an Action in the Queen's Courts againſt ſuch Officer, to aſſert his Right, and recover Damages for the Injury; your Petitioners thereupon brought the like Actions in their own Caſes.

That they have for ſo doing been Committed to *Newgate*, by Virtue of Warrants from the Speaker of the Houſe of Commons, Copies whereof are annext.

That they did, by the Advice of their Counſel, on the 5th day of this inſtant *February*, Move for their Writs of *Habeas Corpus*, directed to the Keeper of *Newgate*, to bring your Petitioners before Her Majeſty's Court of *Queen's Bench*: Whereupon, the ſaid Court, *viz.* Mr. Juſtice *Powell*, Mr. Juſtice *Powys*, and Mr. Juſtice *Gould*, did grant the ſaid Writs, directing the ſame to be made Returnable on the 10th day of *February* aforeſaid, notwithſtanding that your Petitioners ſaid Council did inſiſt, That the ſame was an unuſual Return, and Prejudicial to your Petitioners; on which ſaid day of Return, your Petitioners Council did Argue on their behalf, That by Law they ought to be diſcharged; but by the Opinion of the ſaid three Judges they were Remanded to the ſaid Priſon.

That your Petitioners being thereupon adviſed, there was a manifeſt Error in the ſaid Judgment, and that they were properly Relievable by bringing a Writ of Error Returnable before Her Majeſty in this High Court of Parliament, they did ſeverally Exhibit their Petitions to Her Majeſty, ſetting forth the Proceedings upon the ſaid Writs of *Habeas Corpus*; and humbly prayed, That a Writ of Error might be granted to them reſpectively Returnable in this High Court.

That your Petitioners have not been able as yet to obtain Her Majeſty's Warrant for Authoriſing the Curſitor to make out the ſaid Writs of Error, as is uſual in ſuch Caſes.

That your Petitioners being adviſed, That a Writ of Error is a Writ of Right, do humbly beſeech your Lordſhips to take the Premiſſes into Conſideration, and to give ſuch Directions thereupon as to your Lordſhips ſhall ſeem Juſt: And your Petitioners do further pray, That your Lordſhips will be pleaſed to give the Protection of this Houſe to your Petitioners Counſel and Agents, employed by them in the Adviſing, Applying for, and Proſecuting the ſaid Writs of Error; without which, they refuſe to aſſiſt your Petitioners.

And your Petitioners, as in Duty bound, ſhall ever pray, &c.

John Paty,
His H *Mark.*
John Oviat,
His O *Mark.*

The Dates of the Warrants annext to the Petition.

Martis 5 die Decembris, 1704. for *John Oviat.*
Veneris 2 die Februarii, 1704. *Ditto.*
Martis 5 die Decembris, 1704. for *John Paty.*
Veneris 2 die Februarii, 1704. *Ditto.*

The

The Serjeant at Arms being called upon to give an Account what he had done purſuant to the Orders of the Houſe of *Monday* laſt, ſince the Account he gave yeſterday.

He gave the Houſe an Account accordingly: That he had found Mr. *Denton* at his own Chamber, and had him in Cuſtody; but that he could not find the other Perſons.

A Meſſage from the Lords by Mr. Juſtice *Tracy* and Mr. Baron *Smith*.

Mr. Speaker, The Lords deſire a preſent Conference with this Houſe in the *Painted Chamber*, about ſome Antient Fundamental Liberties of the Kingdom.

Reſolved, That this Houſe doth agree to meet the Lords at a preſent Conference as deſired.

And the Meſſengers were called in again, and Mr. Speaker acquainted them therewith.

Then Managers were appointed, who went to the Conference.

And being returned,

The Lord Marquis of *Hartington* reported the Conference, and that it was Managed by the Earl of *Sunderland*, who expreſſed himſelf as followeth:

THat the Lords have deſired this Conference with the Houſe of Commons in order to a good Correſpondence between the Two Houſes, which they will always endeavour to preſerve. When either Houſe of Parliament have apprehended the Proceedings of the other to be liable to Exception, the Antient Parliamentary Method has been to ask a Conference, it being ever ſuppoſed, that when the Matters are fairly laid open, and Debated, that which may have been amiſs will be rectified, or elſe the Houſe that made the Objections will be ſatisfied, that their Complaint was not well grounded.

Such Hopes as theſe have induced the Lords to command us to acquaint you, That upon Conſideration of the Petition of Daniel Horne, Henry Baſſe, *and* John Paton *Junior, and alſo of the Petition of* John Paty *and* John Oviat, *complaining to the Houſe of Lords, That they have been Priſoners in* Newgate *for about Twelve Weeks, upon ſeveral Warrants ſigned by the Speaker of the Houſe of Commons, bearing date the 5th of* December *laſt, for their having Commenced and Proſecuted Actions at Common Law, againſt the late Conſtables of* Aylesbury, *for not allowing their Votes, at an Election of Members to Serve in Parliament; which Actions they alledged they were encouraged to bring by reaſon of a Judgment given in Parliament upon a Writ of Error brought in the laſt Seſſion by one* Aſhby *againſt* White *and others; and alſo repreſenting by the ſame Petitions what had been done by them reſpectively ſince their ſaid Commitment, in order to obtain their Liberty, and praying the Conſideration of the Houſe of Peers upon the whole Matter; and alſo upon Conſideration of a Printed Paper, Entituled,* The Votes of the Houſe of Commons, *ſigned with the Speaker's Name, and dated the 24th of this inſtant* February; *the Houſe of Lords found themſelves obliged to come to ſeveral Reſolutions, which they have commanded us to Communicate to you at this Conference*; and are as follows:

It

It is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That neither Houſe of Parliament hath any Power, by any Vote or Declaration, to create to themſelves any new Privilege, that is not warranted by the known Laws and Cuſtoms of Parliament. 1.

Reſolved,

That every Freeman of *England*, who apprehends himſelf to be injured, has a Right to ſeek Redreſs by Action at Law; and that the Commencing and Proſecuting an Action at Common-Law againſt any Perſon, (not entituled to Privilege of Parliament) is no Breach of the Privilege of Parliament. 2.

Reſolved,

That the Houſe of Commons, in Committing to *Newgate Daniel Horne*, *Henry Baſſe* and *John Paton* Junior, *John Paty* and *John Oviat*, for Commencing and Proſecuting an Action at Common Law againſt the late Conſtables of *Aylesbury*, for not allowing their Votes in Election of Members to Serve in Parliament, upon Pretence that their ſo doing was contrary to a Declaration, a Contempt of the Juriſdiction, and a Breach of the Privilege of that Houſe, have aſſumed to themſelves alone a Legiſlative Authority, by pretending to attribute the Force of a Law to their Declaration, have claimed a Juriſdiction not warranted by the Conſtitution, and have aſſumed a new Privilege, to which they can ſhew no Title by the Law and Cuſtom of Parliament; and have thereby, as far as in them lies, ſubjected the Rights of *Engliſhmen*, and the Freedom of their Perſons, to the Arbitrary Votes of the Houſe of Commons. 3.

Reſolved,

That every *Engliſhman*, who is Impriſoned by any Authority whatſoever, has an undoubted Right, by his Agents or Friends, to apply for and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Courſe of Law. 4.

Reſolved,

That, for the Houſe of Commons to cenſure or puniſh any Perſon, for aſſiſting a Priſoner to procure a Writ of *Habeas Corpus*, or by Vote or otherwiſe to deter Men from Solliciting, Proſecuting and Pleading upon ſuch Writ of *Habeas Corpus* in behalf of ſuch Priſoner, is an Attempt of dangerous Conſequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the neceſſary Aſſiſtance to the Priſoner, upon a Commitment of the Houſe of Commons, which has ever been allowed upon all Commitments by any Authority whatſoever. 5.

Reſolved,

That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for, (though at the Requeſt of either Houſe of Parliament) the Denial thereof being an Obſtruction of Juſtice, contrary to *Magna Charta*. 6.

In these Resolutions the House of Lords have expressed that Regard and Tenderness which they have always had, and will ever maintain for the Rights of the People of England, *and for the Liberties of their Persons; and also their Zeal against all Innovations to the Prejudice of the known Course of Law, whereupon the Happiness of our Constitution does depend: And they hope that, upon Recollection, the House of Commons will be of the same Opinion in all the Particulars Resolved by the Lords, and agree with their Lordships therein.*

Ordered,

That the said Report be taken into Consideration to morrow Morning.

Jovis 1 *die Martii*, 1704.

THE House (according to Order) proceeded to take into Consideration the Report from the Conference with the Lords yesterday.

Ordered,

That it be referred to the Managers that managed the last Conference, to draw up what is proper to be offered to the Lords at the next Conference; and that they do withdraw into the Speaker's Chamber, and do Sit *de Die in Diem*, and have Power to send for Persons, Papers and Records.

Sabbati 3 *die Martii*, 1704.

THE Earl of *Dysert* reported from the Committee appointed to examine what Persons have been concerned in Soliciting, Prosecuting or Pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Persons committed to *Newgate* for Breach of the Privileges of this House, or what other Persons have promoted or abetted the same; That upon the Examination of Witnesses it appeared to the Committee, That one Mr. *Clifton* being summoned to attend the said Committee, did not appear, tho' his Wife own'd he had the said Summons, and told her he would attend accordingly. Mr. *Smith*, one of the Officers of the Prison of *Newgate*, said, That the said Mr. *Clifton* used to come often to the Prison, to visit the Five Prisoners committed thither by this House; and he has received of him about Fifteen Pounds for their Lodging, and about Five Pounds more of the Turnkey, that has been left with him upon the same

ſame Account by Perſons unknown to him. That there is nothing owing for their Lodging, but ſince *Saturday* Night. That they paid Fifty Shillings *per* Week for their Lodging, and uſed to provide their Diet from the Sutler's. And that the Committee having iſſued out ſeveral Summons for Mr. *Henry Ceſar*, one of the Curſitors of *London* and *Middleſex*, to attend them, in order to give the Committee an Account what Perſons had applied to him to make out Writs of Error on the behalf of *John Oviat* and the other Priſoners lately committed by this Houſe to *Newgate*: It appeated, (upon the Examination of *Kingham* the Meſſenger, who ſerved the ſaid Summons) That he left a Copy of the Summons on *Tueſday* Night at Mr. *Ceſar*'s Chamber at *Symonds-Inn*, with his Landreſs, he not being within. That the ſaid Meſſenger, ſince, left a Second Summons at the ſaid Mr. *Ceſar*'s Chamber, who has not obeyed the ſame.

And a Debate ariſing in the Houſe upon the ſaid Report;

And a Motion being made, and the Queſtion being put, That the Debate be Adjourned?

It paſſed in the Negative.

Reſolved, That it appears to this Houſe, That Mr. *Clifton* having been ſummoned to attend a Committee of this Houſe, and not attending thereupon, is guilty of a Contempt, and of a Breach of the Privilege of this Houſe.

Ordered, That the ſaid Mr. *Clifton* be, for his ſaid Contempt and Breach of Privilege, taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

Reſolved, That it appears to this Houſe, That Mr. *Henry Ceſar*, one of the Curſitors of *London* and *Middleſex*, having been ſummoned to attend a Committee of this Houſe, and not attending thereupon, is guilty of a Contempt, and of a Breach of the Privilege of this Houſe.

Ordered, That the ſaid Mr. *Henry Ceſar* be, for his ſaid Contempt and Breach of Privilege, taken into the Cuſtody of the Serjeant at Arms attending this Houſe.

Martis 6 die Martii, 1704.

THE Serjeant at Arms attending this Houſe acquainted the Houſe, That a Perſon had this Morning brought him a Writ of *Habeas Corpus*, under the Great Seal, for Mr. *Mountague* (in his Cuſtody by Order of this Houſe) to be brought (as he was informed) before the Lord Keeper of the Great Seal of *England*: And he delivered the Writ (under Seal) in at the Table.

And

And it appearing by the Label to be returnable *immediatè*, but not before whom he was to be brought, nor any Officer's Name thereto, the Writ was opened by the Clerk, and read; and is as followeth.

The Label. *Samuel' Powell Ar' Servien ad Arma, &c. H. Corp' pro Mountague Ar' R. immediatè.*

ANna Dei Gratiâ Ang' Sco' Fran' & Hibern' Regina Fidei Defensor &c. Samueli Powel Ar' Serv' ad Arma attenden' Honorab' Dom' Commun' ejus Deputato & Deputatis Salutem. Precipimus vobis & cuilibet vestrum quod Corpus Jacobi Mountague Ar' nuper capt' & in Custod' vestra vel alicujus vel unius vestrum ut dicitur detent', sub salvo & securo Conduct' una cum Die & Causa Captionis & Detentionis pred' Jacobi Mountague quocunq; nomine idem Jacob' Mountague censeatur in eadem habeatis seu aliquis vel unus vestrum habeat cor' predilecto & fidel' nostro [illegible]honorab' Nathan Wright Mil' Dom' Custod' Mag' Sigil' nostri Angl' apud Dom' Mansional' suam in Parochia Sancti Egidii in Campis in Com' Mid' immediate post Reception' hujus Brevis ad faciend' subjiciend' & recipiend' ea omnia & singula que dictus Dominus Custos Magni Sigil' nostri Angl' de eo ad tunc & ibidem Cons' in hac parte & habeatis seu aliquis vel unus vestrum habeat ibi hoc Breve. Teste meipsa apud Westm' Sexto Die Martii Anno Regni nostri Tertio.

Endorsed, *Per Statutum Triceſim' prim' Caroli Secundi Regis.*

N. Wright, *C. S.*

The Serjeant also acquainted the House, That he heard there was another *Habeas Corpus* granted for Mr. *Denton*, in his Custody also.

While the Matter, (upon occasion of the said forementioned Writ) was debating, the Serjeant acquainted the House, That the other Writ of *Habeas Corpus*, was just served upon his Deputy, who had Mr. *Denton* in his Custody: And he also delivered the same in at the Clerk's Table, where it was read; and was the same, *Mutatis Mutandis*, with the former.

And the Precedents of what was done in the Year 1675 were (by Order) read: And several Members mentioned, upon their Memory, what was done in the Year 1680. in the Case of one Mr. *Sheridon*.

But the House were of Opinion, That any Person, committed by the House of Commons, was not Bailable, within the Act of *Habeas Corpus* of 31 *Car* II. But came not then to any Resolution.

Martis

Martis 6 die Martii, 1704.

MR. *Bromley* reported from the Committee appointed to draw up what is proper to be offered to the Lords at the next Conference, That they had drawn up the ſame accordingly, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame was read, and (with ſome Amendments) agreed unto by the Houſe: And the ſame is as follows, *viz.*

THE Commons have deſired this Conference with your Lordſhips, in order to preſerve that good Correſpondence between the Two Houſes, which the Commons ſhall always ſincerely endeavour to Maintain, and which is ſo particularly neceſſary at this time of common Danger, that the Commons would not engage in any thing that looks like a Diſpute with your Lordſhips, were it not for the Neceſſity of Vindicating from a manifeſt Invaſion, the Privileges of all the Commons of *England*, (with which the Houſe of Commons is entruſted) even thoſe Privileges which are eſſential, not only to the well Being, but to the very Being of an Houſe of Commons; and the Preventing the ill Conſequences of thoſe Miſunderſtandings, which, if they are not ſpeedily removed, muſt otherwiſe interrupt the happy Concluſion of this Seſſion, and the Proceedings of all future Parliaments.

It was this Conſideration alone, has ſo long prevailed with the Houſe of Commons, not to inſiſt on due Reparation for thoſe Violent and Unparliamentary Attempts made by your Lordſhips upon their Rights and Privileges at the end of the laſt Seſſion of Parliament, but to apply themſelves to the giving the ſpeedieſt Diſpatch to thoſe Supplies which Her Majeſty ſo earneſtly recommended from the Throne, which are ſo neceſſary to enable Her Majeſty to purſue the Advantages that have been obtained againſt the Common Enemy by the great and glorious Succeſſes of Her Majeſty's Arms; and which are now delayed in your Lordſhips Houſe, in ſo unuſual a Manner.

The Commons do agree to your Lordſhips, That when either Houſe of Parliament have apprehended the Proceedings of the other to be liable to Exception, the antient Parliamentary Method has often been to ask a Conference; becauſe it ought to be ſuppoſed, That when the Matters are fairly laid open and debated, that which may have been amiſs will be rectified, or elſe the Houſe that made the Objections will be ſatisfied that their Complaint was not well grounded. But your Lordſhips ſeem ſo little to deſire to have Matters fairly laid open and debated, that, to the great Surprize of the Commons, when your Lordſhips had

Invited them to a Conference, *about ſome Antient Fundamental Liberties of the Kingdom*, they found only the Antient and Fundamental Rights of the Houſe of Commons, and their Proceedings, Cenſured, and Treated in a Manner unknown to former Parliaments; and that your Lordſhips had anticipated all Debates, by delivering poſitive Reſolutions; and theſe Proceedings of your Lordſhips grounded only upon the Petitions of Criminals that had fallen under the juſt Cenſure and Diſpleaſure of the Commons, and upon a Printed Paper, which was not regularly before your Lordſhips.

Though this Manner of Proceeding, as well as the Matters of your Lordſhips Reſolutions, might have juſtified the Houſe of Commons in refuſing to continue Conferences with your Lordſhips, as their Predeceſſors have done upon leſs Occaſions; and though the Commons cannot ſubmit their Privileges to be determined or examined by your Lordſhips, upon any Pretence whatſoever; yet, that nothing may be wanting on their part to induce your Lordſhips to retract theſe Reſolutions, they proceed to take them into their Conſideration.

Your Lordſhips Firſt Reſolution is, *viz.*

That neither Houſe of Parliament hath any Power, by any Vote or Declaration, to create to themſelves any new Privilege, that is not warranted by the known Laws and Cuſtoms of Parliament.

As the Commons have guided themſelves by this Rule, in aſſerting their Privileges, ſo they wiſh your Lordſhips had obſerved it in all your Proceedings. This had entirely taken away all Colour for Diſputes between Her Majeſty's Two Houſes of Parliament, and many juſt Occaſions of Complaint from thoſe the Commons repreſent. This would effectually put an end to that Encroachment in Judicature, ſo lately aſſumed by your Lordſhips, and ſo often complained of by the Commons; we mean the hearing of Appeals from Courts of Equity in your Lordſhips Houſe. This would have hindred the bringing of Original Cauſes before your Lordſhips, and your unwarrantable Proceedings upon the Petition of *Thomas* Lord *Wharton*, complaining of an Order of the Court of *Exchequer*, bearing Date the 15th of *July*, 1701. for Filing the Record of a Survey of the Honour of *Richmond* and Lordſhip of *Middleham* in the County of *York*; an Attempt which (contrary to the antient legal Judicature of Parliament heretofore exerciſed *for the Relief of the Subject oppreſſed by the Power of the great Men of the Realm*) was in Favour of One of your own Body, to ſuppreſs a Publick Record, which all Her Majeſty's Subjects had an undoubted Right to make uſe of; an Attempt that tends to render all Fines and Recoveries, and other Records, (upon which Eſtates and Titles depend) precarious; and conſequently ſubjects the Rights and Properties of all the *Commons* of *England* to an Illegal and Arbitrary Power.

A due

A due Regard to the ſame Rule would have prevented your Lordſhips entertaining the Petitions mentioned at the laſt Conference, which ſet forth,

That the Lords having given Judgment in the Caſe of Aſhby *and* White, *viz. That by the known Laws of this Kingdom every Freeholder, or other Perſon having a Right to give his Vote at the Election of Members to Serve in Parliament, and being wilfully denied or hindred ſo to do by the Officer who ought to receive the ſame, may maintain an Action in the Queen's Courts, againſt ſuch Officer, to aſſert his Right, and recover Damages for the Injury: The Petitioners thereupon brought the like Actions in their own Caſes.*

Whereby an Extrajudicial Vote of your Lordſhips is ſtated as a Judgment of Parliament and Standing Law in that Caſe, your Lordſhips having no Foundation for the Entertaining ſuch Petitions, unleſs, that after having aſſumed to your Selves the hearing of Appeals from Courts of Equity, you would now bring Appeals to your Lordſhips from the Proceedings of the Commons, who are not accountable to your Lordſhips for them.

Your Lordſhips Second Reſolution is,

That every Freeman of England, *who apprehends himſelf to be Injured, has a Right to ſeek redreſs by Action at Law; and that the Commencing and Proſecuting an Action at Common-Law, againſt any Perſon (not Entituled to Privilege of Parliament) is no Breach of the Privilege of Parliament.*

To which the Commons ſay, That every Freeman and every Subject of *England*, has a Right to ſeek Redreſs for any Injury; but then ſuch Perſon muſt apply for that Redreſs to the proper Court, which hath by antient Laws and Uſage the Cognizance of ſuch Matters: For ſhould your Lordſhips Reſolution be taken as an Univerſal Propoſition, all Diſtinction of the ſeveral Courts, *viz.* Common-Law, Equity, Eccleſiaſtical, Admiralty, and other Courts, will be deſtroy'd; and in this Confuſion of Juriſdiction, the High Court of Parliament is involved in your Lordſhips Reſolution.

However, the Commons conceive it no wonder your Lordſhips ſhould favour the Univerſal Propoſition, That all Rights whatſoever are to be redreſſed by Actions at Law, when your Lordſhips pretend to have the laſt Reſort in Caſes of Judicature by *Writs* of *Error*; ſo that your Lordſhips are in this only exceeding your own Judicature, under the Colour of a Regard and Tenderneſs for the Rights of the People, and Liberties of their Perſons.

The Commons are ſurpriz'd to find your Lordſhips aſſert, That the Commencing and Proſecuting an Action againſt a Perſon not entituled to Privilege of Parliament, is no Breach of the Privilege of Parliament, ſince it is moſt certain, That to Commence and Proſecute an Action which would bring any Matter

or

or Cauſe ſolely Cognizable in Parliament, to the Examination and Determination of any other Court, is more Deſtructive to the Privileges of Parliament, than to Commence and Proſecute an Action againſt a Perſon only who is entituled to ſuch Privilege.

That ſome Matters and Cauſes are ſolely Cognizable in Parliament, hath ever been allowed by the ſage Judges of Law, and is evident from many Precedents; and to bring ſuch Cauſes to the Determination of other Courts, ſtrikes at the very Foundation of all Parliamentary Juriſdiction, which is the only Baſis and Support even of that Perſonal Privilege to which the Members of either Houſe of Parliament are entituled; and conſequently, to Commence and Proſecute any Action, whereby to draw ſuch Cauſes to the Examination of other Courts, is equally a Breach of the Privilege of Parliament, whether the Defendant, againſt whom ſuch Action is brought, is entituled to the Privilege of Parliament or not, which, beſides the Nature and Reaſon of the thing, is fully evident from the conſtant Uſage of each Houſe of Parliament, in committing for Contempts only againſt their reſpective Bodies, as appears from many Precedents upon the Journals of both Houſes.

Your Lordſhips Third Reſolution is thus, *viz.*

That the Houſe of Commons, in committing to Newgate Daniel Horne, Henry Baſſe *and* John Paton *Junior*, John Paty *and* John Oviat, *for Commencing and Proſecuting an Action at Common Law againſt the Conſtables of* Aylesbury, *for not allowing their Votes in Election of Members to ſerve in Parliament, upon pretence that their ſo doing was contrary to a Declaration, a Contempt of the Juriſdiction, and a Breach of the Privilege of that Houſe, have aſſumed to themſelves alone a Legiſlative Authority, by pretending to attribute the Force of a Law to their Declaration; have claimed a Juriſdiction not warranted by the Conſtitution; and have aſſumed a new Privilege, to which they can ſhew no Title by the Laws and Cuſtoms of Parliament; and have thereby, as far as in them lies, ſubjected the Rights of* Engliſhmen, *and the Freedom of their Perſons, to the Arbitrary Votes of the Houſe of Commons.*

In Anſwer to which, the Commons affirm, That the ſaid Commitment is Juſtified by antient Precedents, and by the Uſage and Cuſtoms of Parliament, which is the Law of Parliament, and the Rule by which either Houſe ought to govern their Proceedings; and that the Terms of aſſuming to themſelves alone a Legiſlative Authority, of attributing the Force of a Law to their Declaration, of claiming a Juriſdiction not warranted by the Conſtitution, of aſſuming a New Privilege, to which they can ſhew no Title by the Law and Cuſtom of Parliament; and of Arbitrary Votes; are more applicable to this Reſolution of your Lordſhips, which hath no one Precedent to juſtifie it,

To

According to the known Laws and Uſage of Parliament, it is the ſole Right of the Commons of England, *in Parliament Aſſembled, (except in Caſes otherwiſe provided for by Act of Parliament) to Examine and Determine all Matters relating to the Right of Election of their own Members.*

And *according to the known Laws and Uſage of Parliament, neither the Qualification of any Elector, nor the Right of any Perſon elected is Cognizable, or Determinable elſewhere, than before the Commons of* England *in Parliament aſſembled, excepting ſuch Caſes as are ſpecially provided for by Act of Parliament.*

And were it otherwiſe, *the Mayors, Bailiffs, and other Officers, who are obliged to take the Poll at Elections, and make a Return thereupon, would be expoſed to Multiplicity of Actions, Vexatious, Suits, and Inſupportable Expences; and ſuch Officers would be ſubjected to different and independent Juriſdictions, and inconſiſtent Determinations, in the ſame Caſe, without Relief.*

And the Exerciſe of this Power by the Houſe of Commons, is warranted by a long unconteſted Poſſeſſion, and confirmed by the Act that paſſed 7 & 8 *Guil. III. Cap.* 7. And the Houſe of Commons muſt be owned to be the only Juriſdiction that can allow the Elector his Vote, and ſettle and eſtabliſh the Right of it; the laſt Determination in that Houſe being, by that Act of Parliament, declared to be the ſtanding Rule for the Right of Election in each reſpective Place. Nor can any Elector ſuffer either Injury or Damage by the Officer's denying his Vote: For when the Elector hath named the Perſon he would have to repreſent him, his Vote is effectually given, both as to his own Right and Privilege, and as it avails the Candidate in his Election; and is ever allowed, when it comes in Queſtion in the Houſe of Commons, whether the Officer had any Regard to it or no.

In the Beginning of the Parliament held 28 *Eliz.* Mr. Speaker acquaints the Houſe, That he had receiv'd, by the Lord Chancellor, Her Majeſty's Pleaſure; That She was ſorry the Houſe was troubled with the Matter of Determining the Chooſing and Returning of Knights for the County of *Norfolk*: That it was Improper for the Houſe to meddle in it, which was proper for the Lord Chancellor, whence the Writs iſſued out, and whither they were returnable: That Her Majeſty had appointed the Lord Chancellor to confer therein with the Judges; and, upon examining the ſame, to ſet down ſuch Courſe as to Juſtice and Right ſhould appertain.

Nov. the 9th. a Committee was appointed to examine and ſtate the Circumſtances of the Return of the Knights for the County of *Norfolk.*

And on *Friday*, *Nov.* the 11th. Mr. *Cromwell* reports the Caſe of the *Norfolk* Election very largely, in which Report are theſe following Reſolutions.

1. *That the ſaid Writ was duly executed.*

2. *That it was a Pernicious Precedent, that a New Writ ſhould iſſue without the Order of this Houſe.*

3. *That the Diſcuſſing or Judging of this and ſuch like Differences, only be-longed to the ſaid Houſe.*

4. *That tho' the Lord Chancellor and Judges are Competent Judges in their Courts, they are not ſo in Parliament.*

5. *That it ſhould be entred in the Journal-Book of the Houſe, That the Firſt Election is good; and that the Knights then choſen, were received and allowed as Members of the Houſe; not out of any Reſpect the Houſe had, or gave to the Lord Chancellor's Judgment therein paſſed, but meerly by Reaſon of the Reſolution of the Houſe it ſelf, by which the ſaid Election had been approved.*

6. *That there ſhould be no Meſſage ſent to the Lord Chancellor, not ſo much as to let him know what was done therein; becauſe it was derogatory to the Power and Privilege of the ſaid Houſe.*

It alſo appears, That Sir *Edmond Anderſon*, Lord Chief Juſtice of the *Common Pleas*, was acquainted, That the Explanation and Ordering of the Cauſe appertained only to the Cenſure of the Houſe of Commons, not to the Lord Chancellor and the Judges; and that they ſhould take no Notice of their having done any thing in it.

Accordingly Mr. *Farmer* and Mr. *Greſham* were received into the Houſe, and took the Oaths; being admitted only upon the Cenſure of the Houſe, not as allowed by the Lord Chancellor or the Judges; and ſo ordered to be ſet down and entred by the Clerk.

And this Right of the Commons to determine their own Elections, has never been diſputed ſince the Caſe of Sir *Francis Goodwin*, the 1 *Jac.* I. when the Lords would have enquired into the Proceedings of the Houſe of Commons upon his Election: But the Commons then told their Lordſhips, *It did not ſtand with the Honour of the Houſe to give Account to their Lordſhips of any their Proceedings or Doings.*

And in the Reaſons of their Proceedings in that Caſe which they laid by Petition before the King, among other Things, they ſay, *They are a Part of the Body to make New Laws; yet, for any Matter of Privileges of their Houſe, they are, and ever have been, a Court of themſelves, of ſufficient Power to diſcern and determine without the Lords, as the Lords have always uſed to do theirs, without them.*

In which Reaſons, as well as in their Apology afterwards to that Prince, the Houſe of Commons did, above a Hundred Years ſince, ſo clearly, and with ſo much Strength of Reaſon, aſſert their Right in the Matter of the Election of their Members. The Commons think it their Duty to reſiſt all Attempts whatſoever to Invade them.

And

And upon this Occaſion, it may not be improper to cite the Opinion the Houſe of Commons had, of the Judges intermedling in Matters of their Elections, as they have delivered it in the aforeſaid Apology, in theſe Words, *viz.*

Neither thought we, that the Judges Opinions, (which yet in due Place we greatly Reverence, being delivered with the Common Law) which extends only to Inferior and Standing Courts, ought to bring any Prejudice to this High Court of Parliament; whoſe Power, being above the Law, is not founded on the Common Laws, but they have their Rights and Privileges peculiar to themſelves.

When the Earl of *Shaftesbury* was Lord Chancellor, Writs iſſued, during a Prorogation of Parliament, for electing Members in the room of thoſe that were dead: The King himſelf was ſo Cautious, as to the Regularity of this Proceeding, and had ſo much Regard to the Privileges of the Houſe of Commons, that at the next Seſſion of Parliament, 5 *Feb.* 1672. he ſpoke to the Commons, from the Throne, in theſe Words:

"*One Thing I forgot to mention, which happen'd during this Pro-*
"*rogation; I did give Orders for the iſſuing ſome Writs for*
"*the Election of Members inſtead of thoſe that are dead, that*
"*the Houſe might be full at their Meeting: And I am miſta-*
"*ken, if this be not according to former Precedents. But I*
"*deſire you will not fall to other Buſineſs, 'till you have exa-*
"*mined that Particular; and I doubt not but Precedents will*
"*juſtifie what is done: I am as careful of all your Privile-*
"*ges, as of my own Prerogative.*

February the 6th. 1672. the Houſe of Commons took that Matter into Conſideration; and ſeveral Precedents being cited, and the Matter at large debated, and the General Senſe and Opinion of the Houſe being, *That, during the Continuance of the High Court of Parliament, the Right and Power of iſſuing Writs for electing Members to ſerve in this Houſe, in ſuch Places as are vacant, is in this Houſe, who are the proper Judges alſo of Elections, and Returns of their Members.*

Thereupon it was Reſolved,

That all Elections, upon the Writs iſſued ſince the laſt Seſſion, are void; and that Mr. Speaker do iſſue out his Warrant to the Clerk of the Crown, to make out New Writs for thoſe Places: Which was done accordingly.

No other Court than the Houſe of Commons, hath ever had the Determination of the Elections, or any Cognizance of ſuch Cauſes; except where by Acts of Parliament directed: And ſuch an Action as thoſe againſt the late Conſtables of *Aylesbury*, to bring

bring the Right of Voting in an Election, in Queſtion in the Courts of Law, is a New Invention, never heard of before; which (as New Devices in the Law are generally attended with Inconveniencies and Abſurdities) was plainly to ſubject the Elections of all the Members of the Houſe of Commons to the Determination of other Courts.

This undoubted Privilege and Juriſdiction, the Commons think will warrant theſe Commitments, if the late Declaration, (which is agreeable to, and cannot leſſen their Ancient Right) had never been made.

For it is the Ancient and Undoubted Right of the Houſe of Commons, To commit for Breach of Privilege: And the Inſtances of their committing Perſons, not Members of the Houſe, for Breach of Privilege, and that to any Her Majeſty's Priſons, are ancient, ſo many, and ſo well known to Your Lordſhips, that the Commons think it needleſs to produce them.

And it being the Privilege of the Houſe of Commons, to have the ſole Examination and Determination of all Cauſes relating to their Elections, as aforeſaid:

It follows, That any Attempt to draw any ſuch Cauſes to the Determination of any other Court, is a Breach of the Privilege of the Houſe of Commons; for which, the Perſon offending may be committed by the Commons.

And here we cannot but take notice of that Unreaſonable as well as Unnatural Inſinuation, whereby Your Lordſhips endeavour to ſeparate the Intereſt of the People from their Repreſentatives in Parliament, who pretend to no Privileges, but upon their Account, and for their Benefit; and are ſorry to ſay, they are thus ſeverely reflected on by Your Lordſhips, for no other Reaſon, but for their Interpoſing to Preſerve the Rights of the People, and their Liberties, from Your Lordſhips Arbitrary Determinations.

Your Lordſhips Fourth Reſolution, is,

That every Engliſh *Man, who is Impriſoned by any Authority whatſoever, has an undoubted Right, by his Agents or Friends, to apply for, and obtain a Writ of* Habeas Corpus, *in order to procure his Liberty by due Courſe of Law.*

The Commons do not deny that every *Engliſh* Man, who is Impriſoned, by any Authority whatſoever, has an undoubted Right to apply, by his Agents or Friends, in order to procure his Liberty by due Courſe of Law; Provided ſuch Application be made to the proper Place, and in a proper Manner: As upon the Commitments of the Houſe of Commons, (which ſometimes are not, as other Commitments, in order to bring to Tryal; but are, in Caſes of Breach of Privilege and Contempt, the proper Puniſhment of the Houſe of Commons) the Application ought to be to that Houſe.

The

The Commons are ſo willing to allow and encourage every *Engliſh* Man to apply, by his Friends or Agents, to obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Courſe of Law, that they have not Cenſured any Perſon meerly for applying for ſuch Writ of *Habeas Corpus*, even in Caſes where by due Proceſs of Law the Priſoners cannot be diſcharged. For the Commons muſt obſerve, that in many Caſes a Priſoner cannot, upon a Writ of *Habeas Corpus*, obtain his Liberty; as in Caſes of Commitment in Execution, or for Contempt to any Court of Record, or by Virtue of Meſne Proceſs, or the like; and in the Act of *Habeas Corpus* ſeveral Caſes are expreſly excepted: And that no Perſon, committed for any Contempt or Breach of the Privilege, by the Houſe of Commons, can be diſcharged upon a Writ of *Habeas Corpus*, or by any other Authority than that of the Houſe, during that Seſſion of Parliament, is plain from the following Precedents.

23 *Maii*, 1 *Jac.* I.

Jones, *the Priſoner, to be ſent for hither, and to attend his Diſcharge from the Houſe.*

That the Priſoners committed by us, cannot be taken from us, and committed by any other.

In *May*, 1675. the Houſe of Commons having Reſolved, *That there lay no Appeal to the Judicature of the Lords, from Courts of Equity; and that no Member of the Houſe ſhould proſecute any Appeal from any Court of Equity, before the Houſe of Lords*; *Serjeant* Pemberton, *Serjeant* Peck, *Sir* John Churchill, *and* Charles Porter, *Eſq*; *were committed to the Cuſtody of the Serjeant of the Houſe, for a Breach of Privilege, in having been of Council at the Bar of the Houſe of Lords, in the Proſecution of a Cauſe depending upon an Appeal, wherein* Mr. Dalmahoy, *a Member of the Houſe of Commons, was concerned.*

But the Serjeant having been by Force prevented keeping them in Cuſtody, the Commons did, the 4th of *June*, 1675. Acquaint the Lords, at a Conference, as followeth: *Viz.*

We are further Commanded to acquaint you, That the Enlargement of the Perſons impriſoned by Order of the Houſe of Commons, by the Gentleman Uſher of the Black Rod; and the Prohibition, with Threats, to all Officers, and other Perſons whatſoever, not to Receive or Detain them; is an apparent Breach of the Rights and Privileges of the Houſe of Commons: And they have therefore cauſed them to be retaken into the Cuſtody of the Serjeant at Arms, and have committed them to the Tower.

The ſaid Council were afterwards committed to the *Tower* for a Breach of Privilege, and Contempt of the Authority of the Houſe: And the Houſe being informed, That the Lords had or-

dered Writs of *Habeas Corpus* for bringing the Council to the Bar of their Houſe;

The Commons then paſſed the following Reſolutions.

7 Junii, 1675.

Reſolved, Nemine Contradicente,

That no Perſon, committed for Breach of Privilege by Order of this Houſe, ought to be diſcharged, during the Seſſion of Parliament, but by Order or Warrant of this Houſe.

Reſolved, Nemine Contradicente,

That the Lieutenant of the Tower, *in receiving and detaining in Cuſtody Sir* John Churchill, *Serjeant* Peck, *Serjeant* Pemberton, *and Mr.* Porter, *performed his Duty according to Law; and, for ſo doing, he ſhall have the Aſſiſtance and Protection of this Houſe.*

Reſolved, Nemine Contradicente,

That the Lieutenant of the Tower, *in caſe he hath received, or ſhall receive any Writ, Warrant, Order, or Commandment, to Remove or Deliver any Perſon or Perſons committed for Breach of Privilege, by any Order or Warrant of this Houſe, ſhall not make any Return thereof, or yield any Obedience thereunto, before he hath firſt acquainted this Houſe, and received their Order and Directions how to proceed therein.*

Ordered,

That theſe Reſolutions be immediately ſent to the Lieutenant of the Tower.

Afterwards the Lieutenant of the *Tower* gave the Houſe an Account, That he had refuſed to deliver the Council, upon the Lords Order, ſignified to him by the Black Rod, becauſe they were committed by this Houſe: And that after he had received the Votes of this Houſe, he had Writs of *Habeas Corpus* brought him, to bring the Council to the Houſe of Lords at Ten a Clock the next Morning; and humbly craved the Direction of the Houſe what to do.

Mr. Speaker intimated to him, *He ſhould forbear to return the Writs.*

And the Houſe came to ſeveral other Reſolutions.

9 Junii, 1675.

Reſolved, Nemine Contradicente,

That no Commoner of England, *committed by Order or Warrant of the Houſe of Commons, for Breach of Privilege, or Contempt of that Houſe, ought, without Order of that Houſe, to be, by any Writ of* Habeas Corpus, *or other Authority whatſoever, made to appear, and anſwer, and do, and receive a Determination in the Houſe of Peers, during the Seſſion of Parliament wherein ſuch Perſon was committed.*

Reſolved,

Reſolved, Nemine Contradicente,

That the Order of the Houſe of Peers, for the iſſuing out of Writs of Habeas Corpus *concerning Serjeant* Peck, *Sir* John Churchill, *Serjeant* Pemberton, *and Mr.* Charles Porter, *is Inſufficient and Illegal; for that it is general, and expreſſes no particular Cauſe of Privilege, and commands the King's Great Seal to be put to Writs not returnable before the ſaid Houſe of Peers.*

Reſolved, Nemine Contradicente,

That the Lord-Keeper be acquainted with theſe Reſolutions, to the end that the ſaid Writ of Habeas Corpus *may be ſuperceded, as contrary to Law and the Privileges of this Houſe.*

Reſolved, Nemine Contradicente,

That a Meſſage be ſent to the Lords, to acquaint them, That Serjeant Peck, *Sir* John Churchill, *Serjeant* Pemberton, *and Mr.* Cha. Porter, *were committed by Order and Warrant of this Houſe, for Breach of the Privilege, and Contempt of the Authority of this Houſe.*

22 *Martii*, 1697.

Charles Duncomb, Eſq; having been committed by Order of this Houſe, and afterwards diſcharged by Order of the Houſe of Lords, without the Conſent of this Houſe.

Reſolved,

That no Perſon committed by this Houſe, can, during the ſame Seſſion, be diſcharged by any other Authority whatſoever.

Reſolved,

That the ſaid Charles Duncomb *be taken into the Cuſtody of the Serjeant at Arms attending this Houſe.*

Theſe are ſome Inſtances, among many others, that might be produced upon this Occaſion; and the laſt cannot but be particularly remembred by ſome Noble Lords that then ſate in the Houſe of Commons, and ſtrenuouſly aſſerted this Privilege of the Commons.

Your Lordſhips Fifth Reſolution, *Viz.*

Reſolved, *That for the Houſe of Commons to Cenſure or Puniſh any Perſon for aſſiſting a Priſoner to procure a Writ of* Habeas Corpus, *or by Vote, or otherwiſe, to deter Men from Soliciting, Proſecuting and Pleading upon ſuch Writ of* Habeas Corpus, *in Behalf of ſuch Priſoner; is an Attempt of Dangerous Conſequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of Pernicious Example, by denying the neceſſary Aſſiſtance to the Priſoner, upon a Commitment of the Houſe of Commons, which has ever been allowed upon all Commitments by any Authority whatſoever.*

The Commons take this to be another Inſtance of your Lordſhips Breach of your own Rule, your Lordſhips being no Judges of their Privileges; tho' by this Reſolution you ſeem to make a Judg-

Judgment, without having heard, and knowing what the Commons have to alledge for them.

This Attempt therefore in your Lordſhips is of Dangerous Conſequence, tending to a Breach of the good Underſtanding between the Two Houſes, and of moſt Pernicious Example. The Commons late Proceeding, in Cenſuring and Puniſhing the Council that have Pleaded upon the Return of the Writs of *Habeas Corpus*, in behalf of theſe Priſoners, if duly conſidered, is a great Inſtance of the Temper of the *Houſe* of *Commons*: For this Houſe did not Interpoſe, when the Priſoners applied to the *Lord-Keeper*, and the *Judges*, to be Bailed; and had the Lawyers ſhewn ſo much Modeſty, as to have acquieſced in the Opinion of the *Lord-Keeper* and all the *Judges*, That theſe Priſoners were not Bailable by the Statute of *Habeas Corpus*, the *Commons* had never taken any Notice of it: But they would not reſt ſatisfied without bringing on again this Caſe; and the *Privileges* of the *Commons* were, with great Licentiouſneſs of Speech, denied, and inſulted in Publick Court; not with any Hope or Proſpect of Relief of the Priſoners, (who in this whole Proceeding have apparently been only the Tools of ſome Ill-deſigning Perſons, that are contriving every Way to diſturb the Freedom of the *Commons* Elections) but in order to vent theſe New Doctrines againſt the Commons of *England*, and with a Deſign to overthrow their Fundamental Right. And after ſo much Inveteracy ſhewn to the Commons, they could do no leſs than declare the *Abettors, Promoters, Countenancers, or Aſſiſters, of a Proſecution ſo carried on, to be guilty of Conſpiring to make a Difference between the Two Houſes of Parliament; to be Diſturbers of the Peace of the Kingdom; and to have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the* Commons *of* England *in Parliament Aſſembled.*

And the Commons, in Committing the Lawyers, have only done that Right to their Body which your Lordſhips have frequently practiſed, in Caſes of Perſonal Privilege, where any ſingle Member of your Lordſhips Houſe is concerned.

Your Lordſhips Laſt Reſolution, *Viz.*

That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for; (tho' at the Requeſt of either Houſe of Parliament) the Denial thereof being an Obſtruction of Juſtice, contrary to Magna Charta.

The Commons ſhall not enter into any Conſideration, whether a *Writ* of *Error* is of *Right* or of *Grace*; they conceiving it not material in this Caſe, in which no *Writ* of *Error* lies, nor was ever any *Writ* of *Error* brought or attempted in the like Caſe before; and the allowing it in ſuch Caſes, would not only ſubject all the Privileges of the Houſe of Commons, but

the

the Liberties of all the People of *England*, to the Will and Pleaſure of the Houſe of Lords.

And when your Lordſhips Exerciſe of Judicature upon Writs of Error is conſidered; how unaccountable in its Foundation, how inconſiſtent it is with our Conſtitution, which, in all other Reſpects, is the Wiſeſt and Happieſt in the World, to ſuppoſe the laſt Reſort in Judicature and the Legiſlature to be differently placed?

And when it is conſidered how that Uſurpation *in hearing of Appeals from Courts of Equity*, ſo eaſily traced, tho' often denied and proteſted againſt, yet ſtill exerciſed, and almoſt every Seſſion of Parliament extended, it is not to be wondred, that after the Succeſs your Lordſhips have had in thoſe great Advances upon our Conſtitution, you ſhould now at once make an Attempt upon the whole Frame of it, by drawing the Choice of the Commons Repreſentatives to your Determination; for that is a neceſſary Conſequence from your Lordſhips encouraging the late Actions, and your countenancing a *Writ of Error*; which, if allowed upon ſuch a Proceeding, might as well be introduced upon all Acts and Proceedings of Courts or Magiſtrates of Juſtice: And tho' the preſent Inſtance has been brought on under the ſpecious Pretence of preſerving Liberty, it is obvious, the ſame will as well hold to control the Bailing and Diſcharging Priſoners in all Caſes.

And the Commons cannot but ſee how your Lordſhips are contriving, by all Methods, to bring the Determination of Liberty and Property into the *bottomleſs and inſatiable Gulf of your Lordſhips Judicature*, which would ſwallow up both the Prerogatives of the Crown, and the Rights and Liberties of the People; and which your Lordſhips muſt give the Commons Leave to ſay, they have the greater Reaſon to dread, when they conſider in what manner it has been exerciſed, *the Inſtances where they forbear, becauſe they hope your Lordſhips will reform: and they deſire rather to compoſe the old, than to create any new Differences.*

Upon the whole, the Commons hope, That, upon due Conſideration of what they have laid before your Lordſhips, you will be fully ſatisfied they have acted nothing in all theſe Proceedings, but what they are ſufficiently juſtified in from Precedents, and the known Laws and Cuſtoms of Parliament; and that your Lordſhips have aſſumed and exerciſed Judicature contrary to the known Laws and Cuſtoms of Parliament, and tending to the Overthrow of the Rights and Liberties of the People of *England*.

Reſolved, That a Conference be deſired with the Lords, upon the ſubject Matter of the laſt Conference.

Ordered, That Mr. *Aiſtaby* do go to the Lords, and deſire the ſaid Conference.

Mercurii 7 die Martii, 1704.

MR. *Aiſlaby* reported, That he having been at the Lords (according to the Order Yeſterday) to deſire a Conference upon the Subject Matter of the laſt Conference, the Lords return an Anſwer,

That they do agree to a Conference accordingly, and appoint the ſame preſently in the *Painted Chamber*.

Ordered,

That the Managers who managed the laſt Conference, do manage the Conference which is to be preſenrly with the Lords.

And the Managers went to the Conference.

And being returned,

Mr. *Bromley* reported, That they had been at the Conference, and delivered to the Lords what the Houſe had directed.

A Meſſage from the Lords by Sir *Richard Holford* and Mr. *Pitt*. Mr. Spcaker, The Lords deſire a Free Conference with this Houſe to Morrow at One of the Clock in the *Painted Chamber*, upon the Subject Matter of the laſt Conference.

Reſolved,

That this Houſe will ſend to the Lords an Anſwer by Meſſengers of their own.

And the Meſſengers were called in again; and Mr. Speaker acquainted them therewith.

Jovis 8 *die Martii*, 1704. *Anno* 4° *Annæ Reginæ*.

Reſolved,

THAT a Meſſage be ſent to the Lords, to acquaint them, That when their Lordſhips ſent yeſterday in the Afternoon after Three a Clock, to deſire a free Conference upon the ſubject Matter of the laſt Conference, the Houſe was juſt riſing; but that this Houſe will meet their Lordſhips at a Free Conference, as their Lordſhips have deſired, at ſuch time as their Lordſhips ſhall appoint, the time named yeſterday by their Lordſhips being now paſt.

Ordered,

That Sir *Thomas Hanmer* do carry the ſaid Meſſage.

Ordered,

That the Managers who managed the laſt Conference, do manage the ſaid Free Conference: And ſome others were added to them.

Sir *Thomas Hanmer* reported, That he having been at the Houſe of Lords, to deliver the Meſſage directed by this Houſe, he found that the Lords were juſt up.

The

The Serjeant at Arms attending this Houſe having acquainted the Houſe, That he had received Two Writs of *Habeas Corpus* under the Great Seal of *England*, to bring before the Lord Keeper the Bodies of *James Mountague* Eſq; and *Alexander Denton* Eſq; (who are committed to his Cuſtody by Warrants from the Speaker of this Houſe for a Breach of Privilege.)

The Houſe again aſſumed the Conſideration of that Matter: And after Debate,

Reſolved, That no Commoner of *England*, committed by the Houſe of Commons for Breach of Privilege, or Contempt of that Houſe, ought to be, by any Writ of *Habeas Corpus*, made to appear in any other Place, or before any other Judicature, during that Seſſion of Parliament wherein ſuch Perſon was ſo committed.

Reſolved, That the Serjeant at Arms attending this Houſe do make no Return of, or yield any Obedience to the ſaid Writs of *Habeas Corpus*; and for ſuch his Refuſal, That he have the Protection of the Houſe of Commons.

Reſolved, That the Lord Keeper be acquainted with the ſaid Reſolutions, to the end that the ſaid Writs of *Habeas Corpus* may be ſuperceded, as contrary to Law, and the Privileges of this Houſe.

Ordered, That the Clerk of this Houſe do acquaint the Lord Keeper of the Great Seal of *England* with the ſaid Reſolutions.

Veneris 9 die Martii, 1704.

THE Clerk acquainted the Houſe, That he did, purſuant to their Commands laſt Night, wait upon the Right Honourable the Lord Keeper of the Great Seal of *England*, and acquaint his Lordſhip with the Reſolutions of the Houſe yeſterday, relating to the Writs of *Habeas Corpus*; and left the Reſolutions with his Lordſhip.

Sir *Thomas Hanmer* reported, That he having been at the Lords with the Meſſage ordered yeſterday, the Lords do return Anſwer, That they do agree to meet this Houſe at a Free Conference this day, at Two a Clock, in the *Painted Chamber*.

Then the Managers went to the Free Conference.

And being returned,

Mr. *Bromley* reported, That the Managers appointed had met the Lords at the Free Conference, which had laſted very long; And that when the Managers for the Commons took notice of ſome Invaſions of the Houſe of Lords in point of Judicature, particularly as to Appeals, the Lords broke up the Conference.

Ordered, That the Managers do draw up what had paſſed at the Conference, and lay the ſame before the Houſe with all convenient ſpeed.

Martis

Martis 13 *die Martii*, 1704.

MR. *Bromley* reported, That the Managers of the Free Conference with the Lords had (according to Order) drawn up what had paſſed at the ſaid Free Conference, which they had directed him to report to the Houſe, which he read in his Place, and afterwards delivered in at the Clerk's Table.

Ordered,

That the ſaid Report be entred upon the Journals, and is as followeth, *viz.*

THAT the Lords who appeared as Managers, and ſpoke at this Free Conference, were, the Earl of *Sunderland*, the Lord *Ferrers*, the Biſhop of *Salisbury*, the Lord *Halifax*, the Lord *Wharton*, and the Duke of *Devonſhire* Lord Steward.

That the Free Conference was begun by the Managers for the Lords, who ſaid, This Conference was deſired to maintain a good Correſpondence between the Two Houſes, which was never more neceſſary than at this time.

That the delivering Reſolutions at their firſt Conference was Parliamentary; and inſtanced the Reſolutions 3 *Car.* I. which produced the Petition of Right.

That the Lords look upon the Commons to be a great part of the Conſtitution, which cannot be preſerved but by doing Right to both Houſes.

That every part of the Body Politick, as well as the Body Natural, ought to be kept within due Bounds; an Exceſs in any Member will weaken the whole.

That this Conſtitution is the Wonder of the World, and Glory of this Nation; 'tis founded upon Liberty and Property: And the Houſe of Commons hath been a great Fence and Bulwark of Liberty.

That the Lords Reſolutions are very well founded, and juſtified by the Laws of the Land, as is their Judicature in this Caſe.

That it was proper for them to receive the Petitions, and make theſe Reſolutions thereupon.

That the Lords are the great Court of Judicature; and when the Courts below have differed in Opinion, there has been reſort to the Lords for their Judgment, as in the Caſe of Kindred of Half-blood claiming Shares of Inteſtates Eſtates.

That when ſuch a Complaint comes before the Lords, they ought to give their Opinion as to the Law of the Land; and that was the Foundation of their preſent Reſolutions.

That the firſt Reſolution was in effect agreed to by the Commons, tho' they go off to Foreign Matters, of which the Lords take no notice.

That

That the Law of the Land can be altered only by the Legiſlature.

That the Second Reſolution affects the Subjects Redreſs by Action at Law, *&c.*

That all Conſtitutions have reckoned this their Safety, That every Man, from the higheſt to the loweſt, hath the Protection of the Law.

That, according to our Conſtitution, the Subject may conteſt his Right with the Crown, and upon equal Terms, with that Reſpect which is due.

That this Reſolution only aſſerts the Right, does not ſtate the reſpective Courts where the Redreſs is to be had: If the Party miſtakes the Court, he is puniſhed by Coſts of Suit.

The Term of Privileged Cauſes is new, and the Diſtinction unknown

To ſupport the Third Reſolution, it was urged,

That the Breach of Privilege was not well grounded.

That it belongs to the Crown to make Declarations; the Commons did indeed make Ordinances; and when their Prince was Murdered, they came to Declarations.

That a Law without Promulgation cannot have force to make an Offence.

The Liberty of Men's Perſons is the greateſt Privilege, and not to be taken away but in known Caſes; the Invading of it has ſhook the beſt Conſtitutions.

That the taking away the Liberty of one mean Perſon once endangered the Government of *Rome*.

That both Houſes may commit for Breach of Privilege, but cannot declare any thing to be a Privilege without good Grounds; nor conſequently make any thing a Contempt that is not known to be ſo.

That Commitments or Cenſures have not been uſual upon Actions at Law, tho' ſuch Actions have brought the Proceedings or Privileges of either Houſe in queſtion.

That in the Caſe of Freedom of Speech, which is the greateſt Privilege, there was a Judgment in King *Charles* the Firſt's Reign, in the Heat of thoſe Times, againſt ſome Members for Speeches in Parliament: This the Commons firſt condemned; and then by Conference brought it before the Lords, who came to a Reſolution, That it was Erroneous, and deſired the Lord *Hollis* to bring his Writ of Error; and thereupon it was reverſed by the Lords in the time of *Charles* the Second; which ſhews the Care the Lords had of the Commons Privileges.

That in *Soames* and *Barnardiſton*'s Caſe, the Commons did not concern themſelves, only in Support of the Action, when in 1678 they examined the Judgment of Reverſals as a Grievance.

That the Lords had not interpoſed in any Suits which concerned the Proceedings of their Houſes.

That the Earl of *Banbury* (as he was called) was by the Lords adjudged to be no Peer: This was examined in the *King's-Bench*, where, in Abatement of an Indictment of Murther againſt him as *Charles Knolles* Eſq; he pleaded his Title of an Earl; and in Avoidance of that, the Order of the Lords was replied, and was examined by the Court, and diſallowed.

That the late Biſhop of *St. Davids* was proſecuted in the Spiritual Court, and deprived, tho' a Member of that Houſe; and the Lords did not interpoſe.

That it is the Wiſdom of all Governments to have the Law open; and that's the Difference between a Legal and an Arbitrary Government.

That the Lords do not meddle with the Commons Right of Determining their own Elections; they have a ſettled Poſſeſſion of it, which is a Right: But if all the Rights of Subjects concerned in thoſe Elections are to be determined there, that will bring all Queſtions of Freedom, and the Allowance of all Charters, and all Liberty and Property, before them.

That a Freeholder of Forty Shillings *per Annum* has a Right of Inheritance, to which he is born; and if his Vote is denied, he is damnified, and loſes the Credit of his Vote; and if he ſhall only come to the Houſe of Commons, they can neither give him Damages, nor Coſts of Suit.

That a Freehold cannot be determined by any Court which cannot give an Oath.

That the Precedents produced concern only the Right of Determining Elections in general.

And an Action by an Elector, for his Right of Voting, does not avoid the Election.

To maintain the Fourth Reſolution they ſaid,

That it may be lawful for a Man to apply for his Liberty where he cannot have it.

That the Proceedings in 1675. produced as a Precedent in this Caſe, were upon a Matter conteſted between the Two Houſes, and reſolved differently in the Lords Houſe: *Topham* and the Lieutenant of the Tower were both turned out; and the Ferment was ſo high, that the Parliament was prorogued, and ſoon after diſſolved.

The Fifth Reſolution is a Conſequence of the Fourth;

That the Commitment of the Lawyers was not for Licentious Speech, as was inſinuated at the laſt Conference, but for pleading upon the Return of the Writs of *Habeas Corpus*.

That 'tis the particular Character of that odious Court called the Inquiſition, that no Body dares appear for or reſort to a Perſon impriſoned there, but he is left to the Mercy of the Court.

The Lawyers are not to be anſwerable for every thing they argue; they are to do their Duty for their Clients, and the Court is to judge of it.

The Commons declining the laſt Reſolution is an Agreeing it, though not ſo Parliamentary as it would have been to have agreed it directly.

That the Lords are the only proper Judges, Whether the Writ of Error lies befor them.

To theſe Arguments the Managers for the Commons anſwered,

THAT they agreed the Neceſſity of a good Correſpondence between the Two Houſes, eſpecially at this time of Common Danger; and that the Commons had fully ſhewn their Deſire to maintain that good Correſpondence, by condeſcending to meet their Lordſhips at this Free Conference, although their Ancient and Fundamental Privileges had been called in Queſtion, and denied by their Lordſhips, and that in an Extraordinary and very Unparliamentary Manner.

That the Delivery of Reſolutions is ſo far from being the only Method of Conferences, that the more uſual Method has been to offer Reaſons, without Reſolutions; and it would be very difficult to give any Inſtance (before this) of either Houſe delivering poſitive Reſolutions at a Conference, without the Reaſons at the ſame time to ſupport them, and that induce them to make ſuch Reſolutions.

That the Commons Anſwer to the Lords Firſt Reſolution is not foreign to the Subject Matter of the Conference; becauſe the Commons apprehended the Subject Matter to be their Lordſhips denying the Privileges of the Commons on the one hand, and their extending their own Judicature beyond its proper Limits on the other: And therefore the Commons could not but take notice how far their Lordſhips had tranſgreſſed in the Exerciſe of an Unwarrantable Judicature, in Condradiction to that very Rule they had laid down for the Teſt of the Proceedings of the Commons, and by which the Commons had ſtrictly governed themſelves.

That the Commons cannot create new Privileges; yet in *Cook*'s 13 Reports, Fo. 63. 'tis ſaid, the Privilege of Parliament, either of the Upper Houſe, or of the Houſe of Commons, belongs to the Determination or Deciſion only of the Court of Parliament; for every Courthath a Right to adjudge their own Privileges, according to the Book of *E.* 4. Sir *John Paſton*'s Caſe.

To their Lordſhips Arguments for their Second Reſolution your Managers anſwered,

That every Perſon injured, hath a Right to ſeek Redreſs; but then that Redreſs muſt be ſought in the Place where the Matter is properly cognizable.

To what the Lords offered upon the Third Reſolution, your Managers anſwered, That Matters of Election do not belong to the Courts below, but only to the Houſe of Commons, which hath been in long Poſſeſſion of them: That there was an Act of Parliament made in the time of King *Henry* the Sixth, to give an Action for a falſe Return of Members to ſerve in Parliament, be-

cauſe

cauſe no ſuch Action lay at Common Law, it relating to Elections.

That Double Returns not being within that Statute, no Action lay in the Courts of Common Law for making any Double Return, till the Statute 7 & 8 *William* III.

That beſides the Inſtances given in the Anſwers the Commons gave to the Lords Reſolutions at the laſt Conference, this Diſtinction, as to Privileged Caſes, is fully and undeniabley warranted by the Statute made in the Firſt Year of King *William* and Queen *Mary*, Entituled, *An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown*; where, among other Endeavours of the late King *James* to Subvert and Extirpate the Laws and Liberties of the Kingdom, theſe are mentioned, *by Violating the Freedom of Election of Members to ſerve in Parliament*, and *Proſecutions in the Court of* King's *Bench for Matters and Cauſes only cognizable in* Parliament.

Beſides, That there are Privileged Caſes as well as Privileged Perſons, appears from hence: A Prohibition, and afterwards an Attachment, lies for ſuing in the Spiritual Court for a Temporal Cauſe determinable in the Temporal Court. There are divers Laws within this Realm, of which the Common Law is but one, as appears in *Cooke*'s 1 *Inſt.* Fo. 11. B. where he mentions *Lex & Conſuetudo Parliamenti, & Lex Communis*, as diſtinct Laws.

As there are ſeveral Laws, ſo there are ſeveral Courts and Juriſdictions, and ſeveral Cauſes proper for thoſe ſeveral Laws and ſeveral Juriſdictions: Of theſe the High Court of Parliament is the Firſt; *Lex & Conſuetudo Parliamenti* is a great Branch of the Law of *England*; and many Cauſes are to be determined only by that Law, as appears in the *Inſt.* Fo. 23.

With ſuch Cauſes as are in their Nature Parliamentary, and to be determined by the Law of Parliament, the Common Law and Common Law Judges have nothing to do; as further appears, 4 *Inſt.* Fo. 14, 15. where the Expreſſions are very ſuitable to the preſent Controverſies.

That the Perſons perſiſting in the Proſecution of ſuch Actions, after a Prohibition by the Commons, for that ſuch Cauſes belong to their Juriſdiction, the Committing them for the Breach of their Privileges in that Particular, is no more than is done by the Common Law Courts for a like Contempt, when Perſons will ſue after a Prohibition to the Spiritual Courts: And the Commons uſual way to defend their Privileges againſt ſuch Invaſions, has been by Committing the Tools and Inſtruments thereof.

It is a Fundamental Maxim of the Law and Cuſtom of Parliament, which is the Higheſt and Nobleſt Part of the Law of *England*, and particularly adapted to the Preſervation of the Liberties of this Kingdom, That this Two Houſes are independent of one another, and ſole Judges of their Rights and Privileges: That their Lordſhips did admit, the Commons have a Privilege

to

to judge of the Rights of their own Elections to one Intent, but not to another: But if the Commons have ſuch a Privilege to one Intent, they muſt be Judges of it to all Intents and Purpoſes whatſoever; and being ſole Judges thereof, their Judgment cannot be legally called in Queſtion, either by *Writs* of *Habeas Corpus*, *Writs* of *Error*, or otherwiſe, in any other Court; and conſequently the Proceedings in *Weſtminſter-Hall* and in the Houſe of Peers, and the Judgment given there, are all null and void, *& coram non Judice.*

The Commons Commitment for Commencing theſe Actions is no more than what they and their Predeceſſors have in all times practiſed in Caſes of Breach of Privilege.

In Anſwer to what the Lords had offered upon the Fourth Reſolution, your Managers inſiſted, The Application of Friends for the Liberty of any Perſon impriſoned, ought to be in a proper Place, and in a proper Manner, which in this Caſe ought to have been only to the Houſe of Commons, and by the Petitions of the Perſons they had committed.

That the Proceedings in 1675. were ſo well grounded, that they muſt be Precedents to the Commons to follow at all times upon the like Occaſions.

To what the Lords offered upon the Fifth Reſolution, your Managers anſwered:

The Licentiouſneſs of Speech uſed by the Lawyers, was only mentioned among other Particulars of the Provocations they gave the Houſe of Commons; but they were committed for Pleading upon the Returns of the Writs of *Habeas Corpus*, in behalf of the Priſoners committed by the Houſe of Commons, which the Commons (who are the only Judges of their own Privileges) take to be a great Breach of the Privilege of their Houſe.

To the laſt Reſolution your Managers inſiſted, That no Writ of Error lies in that Caſe; and that there may be Caſes wherein no Writ of Error lies, was their Lordſhip's Opinion in the Caſe of the late Biſhop of St. *David's*, who brought his Writ of Error, upon the Court's not granting him a Prohibition.

The Caſe of Sir *Thomas Armſtrong*, mentioned by their Lordſhips, was particular, in that the Commons then apprehended he was entituled to a Writ of Error within the meaning of the Statute of *Edward* the Sixth.

Your Managers further urged the Novelty of the Action in the Caſe of *Aſhby* and *White*, of which no Footſteps can be found in any Book of the Law, or in any Record, although we have faithful Reports of all memorable Caſes for Four hundred Years paſt; and the Occaſion of ſuch an Action muſt frequently have happened.

The Lords themſelves (when they had no Deſign upon the Privileges of the Commons) were of Opinion, in the Caſe of Sir *Samuel Barnardiſton*, in the Firſt Year of King *William*, That no ſuch Action lay; and there is no one Reaſon can be offered to

maintain this Action, but held more ſtrongly in the Caſe of Sir *Samuel Barnardiſton*, as Damages, Coſts, *&c.* And it is an abſurd Diſtinction to ſay, That in this Caſe the Right of Election cannot come in Queſtion, becauſe the Determining the Right of the Electors doth generally determine the Right of the Elected; and almoſt all Controverted Elections depend upon the Qualifications of the Electors.

That the Commons had ſhewn ſuch a Diſpoſition to maintain a good Correſpondence with their Lordſhips, though their Lordſhips, in the Caſe of *Aſhby* and *White*, had, contrary to the Judgment of the Courts below, allowed the Action, upon which the Plaintiff had taken out Execution, and levied the Money, that the Commons took no Notice of it, and were willing to let the Matter fall; which might occaſion any Conteſt in this time of publick Danger: But when other Actions of the like Nature were ſtill commenced and proſecuted, whereby all Elections would be brought to the Determination of the Lords, or, at leaſt, in time ſo influenced as that the Lords, would in Effect chooſe the Commons, and thereby the Independency of the Two Houſes would be deſtroyed, which is the great Safety of the Conſtitution, then it concerned the Commons, who are the Repreſentatives of the People, to oppoſe what would be ſo fatal to our Conſtitution.

The bringing Writs of *Habeas Corpus* upon the Commitments of the Commons, and a Writ of Error thereupon before the Lords, would bring all the Privileges of the Commons to be determined by the Judges, and afterwards by the Lords, upon ſuch Writs of Error.

Nay, ſuch Writs of Error upon every *Habeas Corpus*, would bring the Liberty of every Commoner in *England* to the Arbitrary Diſpoſition of the Houſe of Lords.

And if a Writ of Error cannot be denied in any Caſe, and the Lords alone are to judge whether the Caſe be proper for a Writ of Error, then all the Queen's Revenue, all Her Prerogatives, and all the Lives and Liberties of the People of *England*, will be in the Hands of the Lords; for every Felon, Burglar and Traitor, will be entituled to a Writ of Error before the Lords; and they will have even Power of Life and Death.

And by Writs of Error and Appeals, as already exerciſed, they will have all our Properties; by ſuch new-invented Action they will have all our Elections; and by ſuch Writs of *Habeas Corpus*, and Writs of Error thereupon, they will have all our Privileges, Liberties, and even Lives, at their Determination; who determine by Vote, with their Doors ſhut, and it is not certainly known who it is that hurts you.

The Novelty of thoſe Things, and the infinite Conſequences of them, is the greateſt Argument in Law, That they are not of Right.

The Commons are not contending for a ſmall Thing, but for their All:

Eſpecially ſince the Lords have found out a way to diſtreſs the Government, by detaining the Money given by the Commons, which muſt come laſt to them, becauſe the Money-Bills muſt begin with the Commons; and if by that Means they can extort Writs of Error where they never were heard of, the Commons muſt commit the Perſons employed in all ſuch Innovations, or elſe they muſt loſe, by ſuch Contrivances, All that they have.

In the Caſe of *Denzill Hollis*, Sir *John Elliott*, *&c.* in 1667. the Commons declared the Judgment given in 5 *Car.* I. to be an illegal Judgment, and againſt the Privilege of Parliament: And this they did of themſelves, before they acquainted the Lords therewith.

Afterwards, becauſe it concerned the Lords as well as the Commons, they imparted their Reſolutions to the Lords, who concurred with the Commons; and the Writ of Error, which was afterwards brought at the Deſire and Inſtance of the Lords, and not at all by the Deſire of the Commons, they reſted upon their own Reſolution, That it was an Illegal Judgment. *Vid. Cro. Car. at the End of the Book.*

THE Lords, by way of Reply, ſaid further, That this is a Cauſe of Liberty and Property, and Judicial Proceedings, which the Commons had endeavoured to ſtop.

That the Conference therefore asked by the Lords upon the Fundamental Rights and Liberties was proper.

That they are the ſame Terms the Commons uſed, 3 *Car.* when their Liberties were attacked.

That the true Method of Conference is not by way of Queſtion and Anſwer, but by Reſolutions, which are not ſo binding; but if the Lords are convinced by Arguments, they may retract them.

That the Lords, ſure, may regularly take notice of this Printed Paper, when it contains ſuch Declaration as all Perſons are bound to take notice of at the Peril of Commitment.

That the Right of the Houſe of Commons to determine their own Elections is not in queſtion, or intended to be changed; but the Two Precedents produced to ſupport them, are very much miſtaken.

That the Caſe of Sir *Francis Goodwin* is not fairly ſtated, the Word *Order* being omitted in the Commons Anſwer to the Lords Meſſage, relating to the Commons proceedings in this Caſe; which refers to a particular Order of the Houſe of Commons, they having before determined that Election. That it is not taken notice, that the Lords went with the Commons to the King, and were Mediators; and that at the laſt a new Writ iſſued for a new Election.

That in the Stating the Precedents, 28 *Eliz.* the Commons have not taken notice, That the Election was in that Caſe determined by the Judges.

That

That the Commons did not confine their Reſolution to *Armſtrong*'s Caſe; but it's general and abſolute, That a Writ of Error in Felony or Treaſon is of Right, and not of Grace.

That by the Writ of Error brought in the late Biſhop of St. *David*'s Caſe, upon the Denial of Prohibition, and diſallowed by the Lords, it appears, when a Record comes improperly before them, they are ſo juſt as to diſmiſs it.

That, inſtead of proving the Law, the Conſequences are urged, which is not right arguing.

That the Queſtion is, Whether the Queen is bound to grant a Writ of Error? If She is, it will be hard for any Body of Men to interpoſe with the Crown, and ſtop it to hinder that *Fiat*; which, by the Opinion of the Judges, She ought to give.

She is obliged too, by *Magna Charta: Nulli negabimus, nulli differemus, Juſtitiam.*

That whether a Writ of Error lies or not, will afterwards be proper for the Judgment of this Court, as 'tis of any other Court where a Writ of Error is returnable.

That the Commons are very ſafe, and may depend the Lords will be as tender of their Privileges as of their own.

That whatever Privileges accrew to the Commons, will accrew to the Lords alſo: If the Commitments of the Commons are free from the Cognizance of the Courts below, thoſe of the Lords will be ſo too.

That 3 *Car.* the Commons maintained, That the Meaſure of Perſons being bailable, is not from the Authority which committed, but from the Cauſe of Commitment.

YOur Managers further obſerved, This Subject Matter was ſcarce ever in Conference before between the Lords and Commons, and will ſeem ſtrange to Poſterity.

That the Lords Concern for Liberty and Property cannot be equal with that of the Commons; for the Lords Liberty is better fenced, and conſequently their Property too, than that of the Commons.

The Lords are leſs intereſted in the Event of this Conference than the Commons, who are the Truſtees of thoſe who ſent them, and are bound in Duty and Intereſt to preſerve their Liberty and Property: And having but a Triennial Duration, which is at this time near expiring, it's not to be imagined they will infringe what they are entruſted with, and ſo much concerned to maintain; and that ſo notoriouſly, that the Lords ſhould complain, who are much leſs concerned, but more to be feared, as their Deſigns as well as Honour may be Hereditary.

At the Firſt Conference, Six Reſolutions were delivered, as Matters of undoubted Truth and Law.

And the Proceeding of the Commons are to be Tried by theſe Rules, though they were no Parties to the making them.

The Fir ſt is not to be excepted againſt; only is an Inſinuation, as if the Commons had practiſed the contrary, which they are not conſcious of.

To

To the Second, There are many Injuries for which no Action at Law is allowed; as if a Judge gives a wrong Judgment, the Redreſs by Writ of Error is no Satisfaction for the Damage.

So for other Acts of a Judge or Court of Juſtice, as denying a Writ of *Habeas Corpus*, or Bail, no Action lies, but upon the late Statute.

That their Lordſhips, not making any Diſtinction between Matters and Cauſes which were exempt from the Cognizance of the Common Law Courts, as being ſolely Cognizable in Parliament, and Cauſes which were exempt only in reſpect of the Perſons ſued being entituled to Privilege of Parliament, ſeems to be the occaſion of the Miſtakes their Lordſhips have entertained in relation to the Proceedings of the Commons, That the Houſe of Commons is a Court of Judicature in many reſpects; and as ſuch, hath, as well as other Courts, Cauſes proper and peculiar to its Juriſdiction.

That the Law-Books, and particularly the Lord *Cooke*, ſpeaks of Matters of Parliament which *are not to be determined by the Common Law, but according to the Law and Uſage of Parliament.*

That *all Matters moved or done in Parliament, muſt be Queſtioned and Determined there, and not elſewhere*, has been heretofore aſſerted by the Houſe of Commons, as their Antient and Undoubted Right, and has been allowed both by the Judges of Law, and by their Lordſhips. And when the Judges in the *Kings-Bench* in the Fifth Year of King *Charles* the Firſt, upon an Information againſt Sir *John Elliot*, Mr. *Hollis* and others, held, *That Matters done in the Houſe of Commons, if not done in a Parliamentary Way, might be queſtioned elſewhere*; that Judgment was afterwards reverſed in Parliament.

That their Lordſhips allowed all Matters relating to Elections ought to be determined ſolely by the Commons: And though their Lordſhips attempted to make a Diſtinction between the Right of Elections and the Right of Electors, yet their Lordſhips cannot find room for ſuch a Diſtinction, unleſs they would ſay, the Right and Qualification of the Electors was a Matter not relating to Elections.

That by the Parliament Rolls 11 *Rich.* II. it appears a Petition was Exhibited by Parliament, and allowed by the King, *That the Liberties and Privileges of Parliament ſhould be diſcuſſed by the Parliament, and not by any other Courts, nor by Common or Civil Law*; and therefore, when the Judges have been asked their Opinions in Matters of Parliament, they have anſwered, *That the Privileges of Parliament ought to be determined there, and not by any other*, as they did in the Caſe of *Thorp*, Speaker of the Houſe of Commons, 31 *H.* VI.

That theſe Matters are not exempt from the Determination of other Courts, in reſpect of the Perſons ſued; for then they might be determined there after the time of Privilege was expired; whereas it is evident, That ſuch Matters and Cauſes cannot be

Determined in any other Courts than that of the Parliament, after the Expiration of the time of Privilege, any more than before.

That theſe Matters are Determinable in Parliament, although the Perſons proſecuted are not entituled to the Privilege of Parliament, as appears by many Inſtances, particularly by that of the *Mayor* of *Weſtbury*, in the Eighth Year of Queen *Elizabeth*, who, for taking *Four* Pound to get a Perſon Elected a Burgeſs for that Borough, was Fined and Impriſoned by the *Houſe* of *Commons*, although he was not a Perſon entituled to the Privilege of Parliament.

That it may as well be ſaid, That an Action is maintainable for refuſing any of the Lords a Right of Precedency in Parliament; yet it cannot be imagined the Houſe of Peers would be content the ſame ſhould be brought in Queſtion in any the Courts of Law, and decided by a Jury of Commoners.

But the ſame Arguments will hold for maintaining ſuch an Action, to recover Damage for refuſing Precedency to him that hath Right to it, as for maintaining an Action to recover Damages for refuſing to take down upon the Poll the Vote of an Elector: For it may with equal Reaſon be ſaid in both Cauſes, That the Plaintiff hath a Right, That the Defendant refuſed him that Right, That ſuch Refuſal is an Injury, and conſequently ought to be repaired in Damages.

As to the Third Reſolution, the Commons are not Accountable to the Houſe of Lords, or any other Court, for what they did in that Matter.

Their Privileges being Rights peculiar to that Houſe, what is their Privilege, and the Breach of it, is only Examinable and to be Judged by themſelves.

That the Courts of *Weſtminſter-Hall* have that Deference for each others Judgment, that in Commitments for Contempt or Miſdemeanor, which are frequent every Term, another Court, though Superior, will not Redreſs the Priſoner by *Habeas Corpus*, or otherwiſe; but he muſt addreſs to the Court which committed him, much leſs can an Inferior Court do it.

The Houſe of Commons therefore expected the ſame Deference from thoſe Courts which they pay each other; and alſo from the Lords Houſe what is due to a Co-ordinate Juriſdiction: The Commons taking themſelves to be Superior to any Court in *Weſtminſter-Hall*, and not allowing any Court in this Government to be their Superior, no more than their Predeceſſors have done.

The Commons do not intend by their Declaration to make a new Law, but barely declare what the Law was, and prohibit any Perſon to act contrary.

The Term *Declaration* is not peculiar to the Prince, but is a Familiar Term in *Weſtminſter-Hall*.

The

The Commitment was not for acting contrary to the Vote of the Commons, but for acting contrary to Law, after the Law was notified to them by that Declaration, and they thereby prohibited to proceed in that Courſe.

To ſet this in a true Light, If a Man ſues in the Admiralty, or Eccleſiaſtical Court, for a Matter properly Cognizable at Common Law, the Party ſhall not indeed be committed for Commencing that Suit; but if the Defendant in ſuch Suit obtains a Prohibition, which declares what the Law is, and gives the Plantiff notice that his Suit is contrary to Law, and therefore prohibits him to proceed any further therein; if he does proceed, an Attachment will iſſue to Arreſt him for Breach of the Prohibition, as it is ſaid, though in truth, it is for acting contrary to Law, after he had been admoniſhed what the ſame was.

Now there's no difference between the Declaration complained of, and the Prohibition mentioned, but in the Name only; both declare what the Law is; both admoniſh the Perſon offending, and both command him not to proceed; ſo that there is as much reaſon to complain of a Prohibition at Law, as of the Declaration mentioned in the Reſolution.

To the Fourth Reſolution, if it reſpects the Priſoners committed by the Commons, they apprehend the Application ought to be to their Houſe.

For the Fifth Reſolution, the Commons have the ſame Exceptions to it as they had to the Third Reſolution: For if Counſel, Attorneys, or Sollicitors, are prohibited, and act contrary to the Order of any Court, they are Guilty of a Contempt of that Court; and for ſuch Contempt they may be taken into Cuſtody.

To their Lordſhips laſt Reſolution, it is very true, That in the laſt Reign the Houſe of Commons did ſo reſolve in the Cauſe of Sir *Thomas Armſtrong* as hath been cited, which Caſe was, That Sir *Thomas Armſtrong* was indicted for High-Treaſon, and afterwards fled beyond Sea, where he was at the time of the *Exigent* awarded againſt him; and afterwards, within a Year after the *Exigent* awarded, he was brought Priſoner into *England*, and would have a *Writ* of *Error*, but it was denied him; upon which the *Houſe* of *Commons* made the Reſolution mentioned; at the Common Law, if a Perſon had been guilty of a Capital, or any other Crime, and had been in *England* at the time of the Indictment found againſt him, but was beyond Sea at the time of the *Exigent* awarded, and thereupon an Outlawry was had; the Perſon Outlawed might any time afterwards have reverſed that Outlawry for that Error in Fact: The Practice whereupon was, That Perſons guilty of Treaſon would fly beyond Sea and there ſtay till the Witneſſes againſt them were dead, and then return into *England*, reverſe their Outlawry and become ſafe. To remedy which Miſchief was the Statute of *Edw.* VI. made, which takes away that Error in Treaſon, unleſs the Perſon Outlawed ren-

render'd himſelf to the Chief Juſtice within a Year after the Outlawry; within which Exception was the Caſe of Sir *Thomas Armſtrong*, as the Commons apprehended, which was the Reaſon of the Reſolution: And in other Caſes the Practice ſince that Reſolution has been otherwiſe; for in the Caſe of *Salisbury*, who was attainted of Felony for Counterfeiting the Stamps, a *Writ* of *Error* was denied him, though he Petitioned for the ſame. But if this Reſolution is aimed at a *Writ* of *Error* for denying a *Habeas Corpus*, or denying to Bail or Diſcharge Perſons committed by the *Houſe* of *Commons*, this Reſolution is very wide from the Purpoſe; for, whether a *Writ* of *Error* be a *Writ* of *Right* or a *Writ* of *Grace*, in all Caſes where a *Writ* of *Error* does lie, yet their Lordſhips Reſolution cannot be carried ſo far as to make a *Writ* of *Error* lie in a Caſe where there is no Judgment pronounced, as there never is in the Caſe of an *Habeas Corpus*, or in any thing relating thereunto; for if an *Habeas Corpus* is denied, or if granted, and the Perſons thereupon denied to be Bailed or Diſcharged, this is no ſuch Judgment but that the ſame, or any other Court may grant an *Habeas Corpus*, and Diſcharge or Bail the Perſon committed.

Your Managers added, The Commons hoped it would be no difficulty to convince the Lords, that theſe Reſolutions were both Unreaſonable and Un-Parliamentary, and they have not been much Juſtified; and certainly it cannot be Parliamentary or Reaſonable for the Lords to condemn the Commons in the Caſe of their own Privileges, when the Lords are no Judges of them: And therefore, though the Commons have now entred into this Debate with their Lordſhips, it was never meant to Subject their Proceedings to the Lords Examination, but only to ſatisfie the Lords, and all Mankind, that the Commons have not done any Extravagant thing; that a Noble Lord ſaid, *They did not intend to interrupt the Commons in the Determination of their Elections.* The Commons are beholden to them for that; for otherwiſe, when they thought fit, they might as well meddle with that, as ſeveral other things they have of late taken upon them.

The Commons hope their Lordſhips will conſider what the Conſtitution is, and think it not reaſonable that any part ſhould exceed its due Bounds; but there have been great Invaſions made upon it by their Lordſhips, and ſome Inſtances of that kind have been delivered at the laſt Conference; and it would be eaſie to ſhew, That the Judicature which of late has been aſſumed by the Lords, is not conſiſtent with the Conſtitution.

A *Writ* of *Error* in this Caſe the Commons take to be ſuch: And the Commons would be blameable for admitting of it ſince no ſuch *Writ* does lie; and the Commons have done well in adviſing Her Majeſty not to grant it, ſince it is againſt Law: The Commons find no ſuch Writ ever brought.

'Tis ſaid their Lordſhips will do Right to the Commons upon it; but the Commons can never think it reaſonable to truſt the

Liberties

Liberties of the People of *England* to their Lordſhips Pleaſure; for they that have power to do Right, have power to do Wrong; and Power is ſo often abuſed, that the Commons can never ſuffer the Lords to aſſume this New Power to themſelves. Were we certain Power could never be abuſed, an *Arbitrary*, and what is called a *Tyrannical Power* would be the beſt in the World, for that not being tied to any Rule, would apply the Remedies proper in all Caſes; but ſince this is not to be expected, the Commons were in the Right to ſtop this *Writ* of *Error*: They find one thing has brought on another; and therefore, for the future, ſhall oppoſe any further Progreſs of this Nature.

It was further urged by the Lords, in Reply, That if ſuch a *Writ* of *Error* wants a Precedent, 'tis a new ſort of Impriſonment has occaſioned this.

That the Conſequences urged by Gentlemen cannot avail.

That if the Law be ſo, nothing but the Legiſlature can alter it.

That 'tis ſaid the Lords cannot Judge of the Privilege of the *Houſe* of *Commons*. They do not ſay they can; there may be no occaſion: But from Precedents it appears they have done it by *Writ* of *Error*, and at the deſire of the *Commons*.

That not only the Lords, but all Mankind will Judge of what is not their Privileges, if they claim that, which neither Senſe, nor Reaſon, nor Law will juſtifie.

That if the Commons ſay, To bring an Action at Law againſt Perſons not privileged is a Breach of Privilege, all Mankind will ſay it is not.

That this comes upon a Petition of Five Men to the Lords, ſetting forth, They have been Impriſoned by the Commons for bringing their Actions againſt the Conſtables of *Aylesbury*, and for ſuing out *Writs* of *Habeas Corpus*, and are at leaſt delayed in a *Writ* of *Error*.

The Queſtion lies in a narrow Compaſs;

Whether they have a Right to bring their Actions at Law? If ſo, it is Injuſtice to Impriſon them for doing it;

A Hardſhip to deny them Writs of *Habeas Corpus*, and a greater to Impriſon their Counſel and Agents for endeavouring to procure them their Liberty.

That their Right is ſettled by a Judgment of Law, which will ever remain till altered by the Legiſlature.

That a Declaration of one Houſe, or both Houſes, cannot alter the Law.

That the Lords intend not to diſturb the Commons in their Right of Judging, only as to their own Members.

That the Material Difference is between Judging of the Right of the Electors, and the Right of the Elected.

And there may be Caſes, as here, where the Election is not in Queſtion, and yet the Electors receive great Damage in being denied their Vote.

That the Right of Freehold is a Man's Birthright, and cannot be taken from him, but by Law.

That if any Perſon be injured by any Officer whatſoever, he may by Law ſeek for Reparation: Otherwiſe there is a Right without a Remedy, which is no Right all.

In Anſwer to this your Managers ſaid,

This Action is of the Firſt Impreſſion; and 'tis a good Argument no ſuch Action lies, becauſe none was ever brought before; and eſpecially becauſe Occaſions cannot be preſumed to have been wanting in every new Election of Members to ſerve in Parliament; nay, many more juſtifiable than in the late Caſe of *Aſhby* and *White*, where the Plaintiff was a Perſon likely to become chargeable to the Pariſh, and therefore removed by the Order of Two Juſtices: And this by the way brings in mind the Printed Caſe of *Aſhby* and *White* from the Report of the Lords Committees, where 'tis given in Anſwer, No ſuch Action before was brought, *That few had ſuch a true* Engliſh *Spirit as that Plaintiff*, tho' 'tis ſaid he then was a *Cobler*, and formerly had been an *Hoſtler*; and his Breaſt it ſeems was firſt warmed with this true *Engliſh* Spirit, which was rather a Spirit of Faction.

And it is worthy Obſervation, That in this Caſe, the Coſts and Charges ſuſtained by *Aſhby*, or ſomebody for him, could not be leſs than 100 *l.* more than the Coſts and Damages he recovered; ſo that 'twas *infelix victoria*, and no Benefit, but a Loſs to him. A Noble Lord was pleaſed to ſay further, That tho' he would not pretend to judge of the Commons Privileges, yet he might of what was not their Privilege. That Argument appears very ſtrange, ſince the Commons ſay, The Matter in queſtion is their Privilege; and if the Lords ſaying 'tis not, is ſufficient to diveſt them of it, the ſame Method may diveſt the Commons of all the reſt. The Commons are not going about to create new Privileges, but continue the Poſſeſſion of thoſe which their Predeceſſors ever enjoyed and exerciſed; and which they think neither this or any other future Houſe of Commons can ever depart from.

The Lords afterwards receded from the Generality of their Second and laſt Reſolutions.

They ſaid, The Second, ſo far as that every one who apprehends himſelf injured has a Right to ſeek Redreſs, was general; but what followed of an Action at Law, was confined to the preſent Caſe.

So the Sixth, tho' it was general, was to be underſtood in this particular Caſe.

As

As to what was ſaid, That none but a Superior Court can take Cognizance of what another does, it was anſwered, That when the *Earl* of *Shaftsbury* was committed by the Houſe of Lords for a Contempt, he was brought by a *Habeas Corpus* to the Court of *King's-Bench:* This was complained of to the Houſe of Lords; but they paſſed it over, being of Opinion a Man might ſeek for Liberty where he would.

The Lords Judicature is too Sacred a thing to be touched.

Your Managers thereupon returned, They wiſhed their Lordſhips had ſaid that at the beginning, it would have ſaved much time, and ſhortened the Debates; for the Commons think their Privileges as Sacred as the Lords can their Judicature. Your Managers proceeded to ſay,

That as nothing offered at this Conference, or the laſt, was meant to ſubmit or leſſen the Privilege of the Commons, much leſs had any thing in the Precedents in the time of Queen *Elizabeth*, and *James* I. produced at the laſt Conference any Tendency that way.

And in Anſwer to ſome Objections made to thoſe Precedents, your Managers ſaid, The Commons did not take upon them to ſet forth the whole Proceedings, which are very long; but tho' they had not their Books there to make out their Quotations, can depend upon what they have ſtated to be true.

In the Precedent of *Sir Francis Goodwin's* Caſe, cited by the *Commons*, there are no Omiſſions that, duly conſidered, can make that Caſe leſs to the Advantage of the Commons on this Occaſion; for if the Word *Order* be omitted, and taking the Anſwer to have been, *That they did conceive it did not ſtand with the Honour and Order of the Houſe to give Account of any their Proceedings or Doings*, that will little alter the Caſe, ſince it is plain, from the Entry on the Journal, the Commons, in returning this Anſwer, had Regard chiefly to the Precedent then quoted, 27 *Eliz.* when the Commons refuſed to give the Lords any Reaſons (tho' the Lords deſired them) for the rejecting at the firſt reading a Bill the Lords had ſent down to the Commons: The Reaſons for the Commons Proceedings in this Caſe were prepared by themſelves, which they did communicate to the Lords; but the Lords were not to add or diminiſh: And tho' ſome Lords were preſent at the Commons delivering their Reaſons, there is a material Diſtinction upon the Commons Journals of thoſe Lords being preſent *as Lords of the Council, and not as Lords of the Parliament.*

And the Noble Lord who took notice of the Commons Omiſſion in the Stating of this Caſe, and pretended to ſtate it fully and truly himſelf, omitted, That the new Writ was ordered to iſſue at the Requeſt of *Sir Francis Goodwin*, by his Letter; which, for the Satisfaction of the Houſe, was read and entered on the Journal, before any Queſtion for the new Election was made.

In

In that of the 28th *Eliz.* the Commons did not at the laſt Conference omit to take notice of the Judges Determination; but it's juſtly ſtated as a Matter the Commons in the Examination of that Caſe were informed of, *but did not reſpect*; the Commons then aſſerting themſelves to have the ſole Determination in that Caſe.

Your Managers further urged,

Tho' the Commons do not ſubmit their Privileges, it may be proper to aſcertain what they claim, with the Reaſons why they are at this time the more concerned to oppoſe all Attempts upon them.

They do agree, the Right of Voting may be grounded upon Freehold, Charter, or Preſcription; and they do not pretend to draw them from the Courts of Common Law, when as ſuch they come there originally, immediately and directly in Queſtion.

But it is as plain, when the Right of Voting in an Election is the Thing originally, immediately and directly, in Queſtion, that is ſolely Cognizable in the Houſe of Commons, whoſe Determination is the ſtanding Rule for all Places; and if the Elections only were Examinable by the Commons, and every Elector's Vote was Examinable elſewhere, the Conſequence of ſuch different Determinations is fully ſtated, as delivered at the laſt Conference; which common and known Difference of coming Originally, or Collaterally and Incidentally in Queſtion, will anſwer the Caſe of the Earl of *Banbury*, where the Order of the Houſe of Lords came only Incidentally in Queſtion upon an Indictment for Murther; nor is here any Injury in this Caſe that requires an Action, much leſs Damages; the Elector's Vote, upon every Election, depends upon its own true Foundation, as the Elector then ſtands entituled by Freehold, Charter or Preſcription, whether he was entituled, or was allowed or refuſed, at any former Election, or not.

Nor is Damage always neceſſary to a Remedy; that which is Specifick, and gives the Right, is the moſt Noble and Compleat Remedy; Damages being only Secondary, ſubſtituted by way of Recompence where the other cannot be had, as appears by many Inſtances in the Law.

The Commons had great Reaſon to Aſſert their Ancient Right, and withſtand theſe late and new Attempts upon the Conſtitution, which in every Step have been Unprecedented; *viz.* the *Action*, the *Habeas Corpus*, and the *Writ* of *Error*.

The Action was never known, tho' the like Occaſions have been as frequent as Elections, unleſs theſe *Aylesbury* Men have more refined Notions of their Rights and Privileges than others ever had.

As to the *Habeas Corpus*, the Argument is ſo much ſtronger, as Liberty is dearer than Property.

As to the Writ of Error, tho' the Lords Reſolution is general, they now aſſert it to be of Right only in this Caſe.

As the Commons at the laſt Conference waved the Point of a Writ of Error being of Right or of Grace, ſo they do now, not by way of Admiſſion, but as 'tis not Material in this Caſe.

But thus much may be obſerved, That this is not the Common Caſe where the Queſtion ariſes and falls under the Determination of the Judges of the Law, which is of Petitions of Right and Writs of Error in the Courts of *Weſtminſter*, (as that of Sir *Thomas Armſtrong* was) where the Queen is Party; there it is in the room of a Suit againſt the Crown, and if denied, the Party has no Remedy.

This Petition to the Queen for a Writ of Error in Parliament, is properly a Parliamentary Caſe, and is the ſame when the Queen is Party, or not; and ſeems ſome Remnant of our ancient Conſtitution, where all Petitions were to the King in Parliament, or to the King and his Great Council, which was diſtinct from the Houſe of Peers, and were Examined by Tryers, whether fit for the Parliament to proceed upon, or not; and to ſay, That upon ſuch Examination they could not be rejected, is to ſay, That Examination was inſignificant.

And if in this Caſe no Writ of Error lies, it cannot then be ſaid, That the denying of it is an Obſtruction of Juſtice, or contrary to *Magna Charta*.

That a *Writ* of *Error* lies not in any Proceeding on any *Habeas Corpus*, has been the uniform Opinion of former Times, as appears in the Caſe of the City of *London*, 7 *Jac.* reported by the *Lord Chief Juſtice Coke* in his *Eighth Report*, where one under an Arreſt, for the Penalty in a By-Law, brought his *Habeas Corpus*; and the Judges took it for a Ground, *That no Iſſue or Demurrer could be joined upon the Return, nor could any Writ of Error lie upon their Award*; and upon that, as a Principle, grounded their Reſolution, *Fo.* 128.

And that this never came directly in Queſtion, is, becauſe a Writ of Error in ſuch Caſe was never asked, much leſs had, upon a bare Commitment of any Court whatſoever: And it is hard to imagine, That there is any Lawful Reſort or Appeal for Liberty left untried at this Day, when ſo many in all Times have had occaſion to apply for it, eſpecially conſidering the frequent Commitments of both Houſes of Parliament.

That the Commons are not ſurpriſed to find the Lords make ſuch a Shew of Submitting their Privileges to the Courts of *Weſtminſter*, when it is in order to draw all the Rights and Privileges of both Houſes to their own final Determination; and much leſs when they conſider how Inſignificant all Courts of Juſtice are rendered, while their Lordſhips exerciſe the laſt Reſort in Judicature.

The ſeveral Attemps in the way of Judicature, which have been made upon the Conſtitution, are ſo many Reaſons for the Commons at laſt to make a Stand.

The very Form of the *Writs* of *Error* in Parliament is altered in a moſt material Part.

It is ſtill Returnable into Parliament generally; and the Judgment is entered, *per Cur' Parliamenti.*

But where the ancient Form, which appears in *Raſtall's Entries, Fo.* 302. was, *Ut de Conſilio & Adviſamento Dominorum Spiritualium & Temporalium ac Communitatum in Parliamento noſtro exiſtentium ulterius pro Errore corrigendo fieri faciamus quod de jure, &c.*

Of late, as appears by a *Writ* of *Error* Printed in the Lord Chief Juſtice *Saunders's* Second Report, *Fo.* 228. (and agreeable to that are all the Modern ones) that Word (*Communitatum*) is omitted.

This is only touched for an Inſtance, That even the higheſt Records, which ought to derive to us our Laws and Conſtitution pure and entire, have been corrupted.

And to proceed to Inſtance ſome Modern Innovations upon our Conſtitution in Point of Judicature:

In *December*, 18 *Jac.* I. it appears by the Lords Journal, That an Appeal to the Lords from a Court of Equity, was by them acknowledged to be as New and Unprecedented as any of the Attempts which occaſion the preſent Conference.

Here the Lords interrupted your Managers, Affirming, That they were reſtrained from entring into Debate of their Judicature of Appeals from Equity, as Foreign from the Subject Matter of the laſt Conference. But it was Anſwered, and inſiſted by your Managers, That this was Part of the Matter Offered at the laſt Conference.

And your Managers declared,

That they had more to Offer, and were ready to proceed upon the Subject Matter of the laſt Conference in ſuch manner as they thought their Duty to the Commons of *England* required, if their Lordſhips thought fit to hear them: Whereupon the Lords did riſe, and broke off the Conference.

Reſolved, That the Proceedings of this Houſe, in Relation to the *Aylesbury* Men, Committed by this Houſe for a Breach of Privilege, and the other Proceedings of this Houſe in that Matter, are in Maintenance of the Ancient and Undoubted Rights and Privileges of the Commons of *England*.

Ordered, That all the Proceedings in Relation to the *Aylesbury* Men, Committed by this Houſe, and the Report of the Lords Journal, and Reports of the Conferences, and of the Free-Conference, be Printed.

Ordered, That Mr. Speaker do appoint the Printing of the ſaid Proceedings and Reports.

THE

THE CASE BETWEEN Sir *FRANCIS GOODWIN*, AND *Sir* JOHN FORTESCUE, IN THE REIGN OF K. JAMES I.

As it ſtands upon the

JOURNAL OF THE Houſe of Commons.

LONDON,
Printed for *Edward Jones* in the *Savoy*, and *Timothy Goodwin* at the *Queen's-Head* againſt *St. Dunſtan's* Church in *Fleetſtreet*, 1704.

KING JAMES I.

OF

BASILICON DORON:

OR HIS

INSTRUCTIONS

TO

HIS DEAREST SONNE, HENRY THE PRINCE.

THE CASE between Sir *Francis Goodwin* and Sir *John Forteſcue*, &c.

Die Jovis 22° *Martii*, 1603.

THE Firſt Motion was made by Sir *William Fleetwood*, one of the Knights returned for the County of *Bucks*, on the behalf of Sir *Francis Goodwin*, Knight; who, upon the firſt Writ of Summons directed to the Sheriff of *Bucks*, was elected the firſt Knight for that Shire: But the Return of his Election being made, it was refuſed by the Clerk of the Crown (*quia utlagatus*:) And becauſe Sir *John Forteſcue*, upon a Second Writ, was elected, and entred in that Place, his Deſire was, That this Return might be examined, and Sir *Francis Goodwin* received as a Member of the Houſe. The Houſe gave way to the Motion; and, for a more deliberate and judicial Proceeding in a Caſe of Privilege ſo important to the Houſe,

Ordered, *That the Serjeant (the proper Officer of the Houſe) ſhould give Warning to the Clerk of the Crown to appear at the Bar at Eight a Clock the next Morning, and to bring with him all the Writs of Summons, Indentures, and Returns of Elections for the County of* Bucks, *made and returned for this Parliament; and to give Warning alſo to Sir* Francis Goodwin, *to attend in Perſon, whom their Pleaſure was to hear,* Ore tenus, *to deliver the State of his own Cauſe, and the Manner and Reaſons of the Proceeding in the Election of the Knights of the Shire for that County.*

This being a Motion tending to Matter of Privilege, was ſeconded with another by Mr. Serjeant *Sherly*, touching an Arreſt of Sir *Tho. Riley*, &c.

Die Veneris, viz. 23° *Martii*, 1603.

SIr *George Coppyn*, Knight, Clerk of the Crown in the *Chancery*, this Day (according to former Order) being attended by the Serjeant of the Houſe with his Mace, appeared at the Bar, and produced all the Writs of Summons, Indentures, and Returns, made of the Knights for *Buckinghamſhire* for this Parliament; which were ſeverally read by the Clerk of the Houſe, and then the Clerk of the Crown commanded to retire to the Door: And after, Sir *Francis Goodwin* himſelf (whom it ſpecially concerned) attending to know the Pleaſure of the Houſe, was called in, to deliver the State of his own Cauſe, *Ore tenus*; wherein he was heard at large, and commanded again to retire until the Houſe had determined what to do.

In this mean time the whole Caſe was at large opened, and argued *Pro & Contra* by ſundry Learned and Grave Members of the Houſe; and after much Diſpute, the Queſtion was agreed upon and made.

Queſt. *Whether* Sir F—— Goodwin *were lawfully Elected and Returned one of the Knights for* Bucks, *and ought to be Admitted and Received as a Member of this Houſe?*

Upon this Queſtion, it was
Reſolved in the Affirmative, That he was lawfully Elected and Returned, and *(de jure)* ought to be Received.

Hereupon the Clerk of the Crown was commanded to file the Firſt Indenture of Return: And Order was given, That Sir *Francis* ſhould preſently take the Oath of Supremacy uſual, and his Place in the Houſe; which he did accordingly.

Die Martis, viz. 27° *die Martii*, 1604.

SIr *Francis Bacon*, in Reporting a Conference with the Lords, touching Wardſhip and other Things, Reported, That a Lord touched the Caſe of Sir *Francis Goodwin* as a Thing he had heard at large, but did not underſtand it; and therefore deſired to know it more particularly from this Houſe.

Anſwer was made, That they had no Warrant from the Houſe to ſpeak of it.

Sir *Edward Coke*, His Majeſty's Attorney-General, and Mr. Doctor *Hone*, bring a Meſſage from the Lords, expreſſing with what Acceptation their Lorſhips entertained their Motion Yeſterday, not only for the Matter, being of very great Weight and Conſequence, but eſpecially for the Manner; namely, That, touching Wardſhip, they would not Petition for Eaſe in it as a Matter of Wrong, but of Grief; and pray to be relieved by Grace, and not by Juſtice: And their Lordſhips for Anſwer were deſirous, and moved at that Time to couple in the ſame Petition the Matter of Grievance, of Reſpite of Homage; which His Majeſty, out of his gracious Favour and Love to his People, had himſelf taken Knowledge of. **And as they conceive it to be likely, that the Conference may continue between the Two Houſes, touching the ſaid Matters; as they are very Zealous of the Furtherance of their Purpoſe, ſo are they Jealous of any Impediment that may breed Lett or Hindrance therein: Therefore they deſire, for a more clear Proceeding and Removing of all Stumbling-blocks, that the former Committees may, in a Second Conference to be had, have Authority to treat touching the Caſe of Sir** Francis Goodwin, **the Knight for** Buckinghamſhire, **firſt of all, before any other Matter were farther proceeded in.**

A. The Anſwer to this Meſſage, (as in ſuch Caſes is for the more part uſual) *That they would return Anſwer by Meſſengers of their own.*

Upon this Meſſage it was argued by ſome, *That in no ſort they ſhould give Account to the Lords of their Proceedings in the Houſe; but that Mr. Speaker ſhou'd from the Houſe be a Suitor to His Majeſty, to have Acceſs, and as their common Mouth give his Highneſs Satisfaction by Direction from the Houſe: That now the Judgment of Sir* Francis Goodwin's *Caſe having Paſſed the Houſe, it could not, nor ought not, to be Reverſed by them. A Precedent* Anno 27 Eliz. *cited; where a Bill brought down from the Lords, upon the Firſt Reading was rejected; the Lords ſent Meſſengers to demand a Reaſon of their Judgment: It was denied to yield any Reaſon.*

This

This Argument brought forth this Queſtion, which Mr. Speaker was ordered by the Houſe preſently to make, *Viz.*

Q. *Whether they ſhould Confer with the Lords, touching the Caſe of Sir* Francis Goodwin *the Knight for* Buckinghamſhire ?

And *Reſolved*, That they ſhou'd not.

It was then conſidered as fit to return ſome Anſwer of the Meſſage from the Lords; and Mr. *Secretary Herbert*, with ſome other of the Committees, were appointed to deliver to their Lordſhips, from the Houſe,

That they did conceive it did not ſtand with the *Honour* and *Order* of the Houſe, to give Account of any their Proceedings or Doings: But if their Lordſhips have any Purpoſe to confer for the Reſidue, that then they will be ready at ſuch Time and Place, and with ſuch Number as their Lordſhips ſhall think meet.

Upon the laſt Meſſage to the Lords, the Meſſengers return, That their Lordſhips would preſently ſend Anſwer by Meſſengers of their own.

Sir *Edward Coke*, His Majeſty's Attorney-General, Mr. D. *Carew*, Mr. D. *Hone*, and Mr. *Tyndall*, delivered from the Lords, That their Lordſhips taking Notice in particular of the Return of the Sheriff of *Bucks*; and acquainting His Majeſty with it, His Highneſs conceived himſelf ingaged and touched in Honour that there might be ſome Conference of it between the Two Houſes; and to that End, ſignified his Pleaſure unto them, and by them to this Houſe.

Upon this Meſſage, ſo **Extraordinary** and **Unexpected**, the Houſe entred into ſome Conſideration what were fit to be done; and

Reſolved, That His Majeſty might be moved for Acceſs the next Day. And afterwards they underſtood his Pleaſure to be, That they ſhou'd attend at *Whitehall* at Eight a Clock the next Morning. But becauſe the Time was then ſomewhat far ſpent, they

Ordered, That the Houſe, with Mr. Speaker, ſhould meet at Six a Clock the next Morning in the Houſe.

Yet afore their Riſing they thought fit to name a Committee, to ſet down the Effect of that which Mr. Speaker was to deliver from the Houſe to the King, *Viz.*

Sir *Francis Bacon.*
Mr. *Wentworth.*
Mr. *Martin.*
Mr. Serjeant *Sing.*
Sir *Robert Wroth.*
Mr. *Francis Moore.*
Sir *Henry Mountague.*
Sir *William Fleetwood.*
Mr. *Fuller.*
Mr. Serjeant *Tanfeild.*
Mr. Serjeant *Hubbard.*
Sir *Robert Wingfeild.*
Mr. *Hide.*
Mr. *Diet.*
Mr. *Winch.*
Sir *Edwyn Sandis.*
Sir *Francis Haſtings.*
Mr. *Wiſeman.*
Sir *George Moore.*
Sir *Edward Hobby.*
Sir *Robert Cotton.*
Sir *Thomas Lake.*
Sir *Oliver St. John.*
Sir *Edward Stafford.*
Mr. *Anthrobus.*
Mr. Serjeant *Dodridge.*
Sir *Roger Wilbraham.*
Mr. Sollicitor.
Sir *Edward Tyrrell.*

To meet at Four a Clock this Afternoon at the Parliament-Chamber in the *Middle-Temple.*

Die

Die Mercurii, Viz. 28° die Martii.

MR. Speaker, with a great Number of the Houſe, aſſembled at Six a Clock this Morning, with a Purpoſe to treat and reſolve what ſhou'd be delivered to His Majeſty, (being appointed to attend him the ſame Morning at Eight a Clock) touching the Reaſons of their Proceeding in Sir *Francis Goodwin*'s Caſe: But becauſe the Houſe was not then thought full enough for a Matter of that Conſequence, they proceeded to the reading of Bills.

Upon Motion touching Mr. Speaker's Attendance on the King, a Committee was named to accompany him, *Viz.*

All the Privy-Council, being Members of the Houſe.
Sir *George Carew.*
Vice-chamberlain to the Queen.
Sir *Francis Bacon.*
Mr. Serjeant *Dodridge.*
Sir *Henry Mountague.*
Mr. Serjeant *Hubbard.*
Mr. Serjeant *Lee.*
Mr. *Fuller.*
Mr. *Hide.*
Mr. *Francis Moore.*
Mr. *Winch.*
Mr. *Tate.*
Mr. *Richard Martin.*
Mr. Serjeant *Shirley.*
Mr. Serjeant *Tanfeild.*
Sir *John Heigham.*
Sir *Robert Oxenbridge.*
Sir *William Fleetwood.*
Sir *Edwyn Sandis.*
Sir *Robert Wroth.*
Sir *George Fleetwood.*
Sir *John Scott.*
Sir *Herbert Crofts.*
Sir *James Scudamore.*
Sir *Jerome Horſey.*
Sir *Edward Radcliffe.*
Sir *Thomas Holcroft.*
Sir *Anthony Rowſe.*
Sir *Henry Nevill.*
Sir *Edward Mountague.*
Sir *Thomas Hobby.*
Sir *Michael Sandis.*
Mr. *Thomas Benſon.*
Sir *Francis Fane.*
Sir *Francis Haſtings.*
Sir *George Moore.*
Sir *Edward Hobby.*
Sir *Robert Wingfeild.*
Sir *Maurice Berkley.*
Sir *Edward Tyrrell.*
Sir *William Killegrew.*
Sir *Francis Popham.*
Mr. *Francis Clifford.*
Sir *John Savill.*
Sir *Thomas Waller.*
Sir *William Lower.*
Mr. *Nathaniel Bacon.*
Sir *Richard Verney.*
Sir *George Fane.*
Mr. *Toby Matthew.*
Sir *Thomas Ridgway.*
Mr. *Edward Seymour.*
Sir *William Burlacy.*
Sir *Robert Moore.*
Sir *Jonathan Trelawney.*
Sir *Edward Denny.*
Sir *Thomas Walſingham.*
Sir *Francis Barrington.*
Sir *Robert Nappier.*
Sir *Valentine Knightley.*
Sir *George Carew.*
Maſter of the *Chancery.*
Sir *Nicholas Halſwell.*
Sir *John Thynne.*
Sir *Thomas Freake.*
Sir *Jerome Bowes.*
Sir *Edward Herbert.*
Sir *John Leveſon.*
Mr. *Dudley Carlton.*

Mr. Speaker, together with theſe Committees, were this Day, at Eight a Clock in the Morning, appointed to attend His Majeſty, and to relate the Reaſons of the Proceeding of the Houſe in Sir *Francis Goodwin*'s Caſe; where, upon Anſwer or Reply, ſuch Lawyers as be of the Committee are to give their Aſſiſtance.

Die

Die Jovis, viz. 29° *die Martii*, 1604.

MR. Speaker relateth what he had delivered to the King by Warrant from the Houſe the day before, touching their Proceeding in Sir *Francis Goodwin*'s Caſe, and His Majeſty's Anſwer; *whereof, becauſe part was afterwards penned by Select Committees*, read in the Houſe, and offered in Writing to the King, I have but touched the Heads, omitting many Circumſtances. He ſaid, he Firſt delivered, 1. The Manner and Matter. 2. Then ſuch Precedents as had been vouched and ſtood upon. 3. He opened the Body of the Law for Election.

The Firſt Writ of Summons, Dated *Ultimo Januarii* before the Parliament: The Writ iſſued duly; The Liberty was free, by that Writ, to chooſe in *Pleno Commitatu*: The Election was made according to that Writ, and the Indenture duly returned; **and therefore adjudged by the Houſe,** That this Firſt Election being good, the Second was conſequently void.

For the Matter of Utlary againſt Sir *Francis Goodwin*, there was one Proſecuted againſt him at the Suit of *Johnſon*, 31 *Eliz.* for 60 *l.*. and was laid and proceeded in the *Huſtings*, *London*. Another, at the Suit of one *Hacker*, for 16 *l.* 39 *Eliz.*. That Sir *Francis* had ſince been choſen, admitted, and ſerved as a Member of this Houſe, in the ſeveral Parliaments holden 39 and 43 *Eliz.*

That the Utlary remained in the *Huſtings*, ſo as the Law could not take notice of it; neither was it Pleadable.

1 *Eliz.* One *Smith* was found Utlawed, and Privileged by the Houſe.

23 *Eliz.* One *Vaughan* Utlawed, and, upon the Queſtion and Diviſion of the Houſe, Privileged, being carried with the difference of 6 Voices.

35 *Eliz.* Three Precedents vouched.

39 *H.* 6. *Fits Herbert.* The Caſe not judged; but Opinions delivered.

Mr. *John Killegree* having 52 Utlaries returned againſt him, was admitted to Serve in the Houſe.

Sir *William Harecourt* was found Eighteen times Utlawed, and yet was admitted to Serve.

The Manner of the Election is limitted by the Statute.

The ſuppoſed Utlary, 31 *Eliz.* againſt Sir *Francis*, was no Utlary at all; for whereſoever a Man is ſued, the Proclamation ought to go into the County where the Party dwelleth; or elſe the Utlary is not good.

39 & 43 *Eliz.* The general Pardon is good for Utlaries, againſt all, ſaving the Party at whoſe Suit.

31 *Eliz.* It was *Franciſcus Goodwin Gen.*

39 *Eliz. Franciſcus Goodwin Armig. The Sheriff is no Judge* of the Utlary, neither could take notice it was the ſame Man; and therefore could not properly return him Utlawed.

His Majeſty anſwered, He was loth he ſhould be forced to alter his Tune; and that he ſhould now change it into Matter of Grief, by way of Conteſtation. He did ſample it to the Murmur and Contradiction of the People of *Iſrael.*

He did not attribute the Cauſe of his Grief to any Purpoſe in the Houſe to offend him; but only to a Miſtaking of the Law. For Matters of Fact, he anſwered them all particularly, That for his part he was indifferent which of them were choſen, Sir *John* or Sir *Francis*: That they could ſuſpect no ſpecial Affection in him, becauſe this Was a Counſellor not brought in by himſelf.

That he had no Purpoſe to impeach their Privilege; but ſince they derived all Matters of Privilege *from him, and by his Grant*, he expected they ſhould not be turned againſt him. That there was no Precedent did ſute this Caſe fully: Precedents in the Times of **Minors**, of **Tyrants**, of **Women**, of **Simple Kings**, not to be creditted; becauſe for ſome private Ends. By the Law this Houſe ought not to meddle with Returns, being all made into the *Chancery*, and are to be corrected or reformed by that Court only, into which they are returned. 35 *H.* 6. It was the Reſolution of all the Judges, That Matter of Utlary was a ſufficient Cauſe of Diſmiſſion of any Member out of the Houſe. *That the Judges have now Reſolved*, That Sir *Francis Goodwin* ſtandeth Utlawed according to the Laws of this Land. In Concluſion, it was His Majeſty's ſpecial Charge unto us;

That, Firſt, the Courſe already taken ſhould be truly Reported. 2. That we ſhould debate the Matter, and Reſolve amongſt our ſelves. 3. That we ſhould admit of Conference with the Judges. 4. That we ſhould make Report of all the Proceedings, unto the Council.

This Relation being made, the Houſe did not enter into any further Conſideration of the Matter at that time; but

Reſolved, and Ordered, That it ſhould be the Firſt Matter moved the next Morning.

Die Veneris, viz. 30° *die Martii*, 1604.

MOved and urged by one, touching the Difference now on foot between the King and the Houſe, That there is juſt Fear of ſome great Abuſe in the late Election. That in his Conſcience the King hath been much miſinformed; and that he had too many Miſinformers, which he prayed God might be removed or leſſened in their number. That now the Caſe of Sir *John Forteſcue* and Sir *Francis Goodwin was become the Caſe of the whole Kingdom.* That **Old Lawyers forget, and commonly interpret the Law according to the Time.**

That by this Courſe the Free Election of the Country is taken away, and none ſhall be choſen, but ſuch as ſhall pleaſe the King and Council. Let us therefore, with Fortitude, Underſtanding and Sincerity, ſeek to maintain our Privilege; which cannot be taken or conſtrued any Contempt in us, but meerly a Maintenance of our Common Right, which our Anceſtors have left us, and is juſt and fit for us to transfer to our Poſterity.

Another, For a Law to be made, That never any Man, Outlawed, ſhould ſhow his Face here again. The Difference, he obſerved, was ſome unreſpective Carriage towards His Majeſty in this Matter: And therefore let our Proceeding be Dutiful and Careful towards him, in adviſing of ſome ſpeedy Courſe to give His Majeſty Satisfaction; that is (as he conceived) according to the King's Project, Firſt, to adviſe amongſt our ſelves, and then to conſer with the Judges, *not as Parliament Men, but as Counſellors*; not as though they were to reverſe our Errors, but that we might be better informed; not now the Caſe of Sir *John* and Sir *Francis*, but a Caſe of great Difference between the King and us, wherein we are deeply to conſider the Conſequence if this Pique be bruited in the Country, abroad or beyond the Seas. It is fit we let the King ſee how much we take to heart this Matter, ſythence our Affections have ſo much appeared in the paſſing and preſent expediting of the Act of Recognition, *&c.*

Concluſ.

Conclus. That we ſhould tender our humble Petition to His Majeſty, for Leave to make a Law for the Baniſhing of all Outlaws hereafter from the Parliament, and pray, That we may hold all our Privileges entire.

A Third, That we ought not to conteſt with the King; That it is fit to have a Conference: That by it we ſhall loſe no Privileges, but rather gain; for the Matters of the Conference will be Two, Satisfaction of the King, and putting in Certainty our Privilege. All is not yet ſaid that may be ſaid; we are not to diſpute with one that is Governor of Thirty Legions. *Confitendum eſt ne fruſtra interrogaſſet.* Let us deal plainly and freely with the Lords, and let them know all the Reaſons. They are jealous of the *Honour of a Privy-Counſellor, we of the Freedom of Election.* It is fit great Men maintain their Prerogative; ſo is it fit that we maintain our Privileges. **This is a Court of Record,** therefore ought we by all Means ſeek to preſerve the Honour and Dignity of it. If a Burgeſs be choſen for Two Places, the Burgeſs makes his Choice for which he will ſerve, and a Warrant ſhall be directed from Mr. Speaker, in the Name of the Houſe, to the Clerk of the Crown to ſend forth a Writ for a new Election for the other Place left; which is a direct Proof that it is a Court of *Power* and of *Record.* We have a Clerk and a Regiſter; all Matters that paſs here are entered of Record, and preſerved. As they ſtand for the Honour of a Councellor, ſo we for our Privileges. It is to be wiſhed, That we had a Law to declare our Privileges, that we have a Court of Record and a Regiſter.

Obj. *We* (they ſay) *are but half of the Body, and the Lords are the Parts neareſt the Head.*

Anſw. Nothing aſcends to the Head but by the Breaſts, *&c.*

Concl. That we may pray it may be explained by a Law what our Privileges are; and that no Man Outlawed may hereafter be admitted.

There muſt be a Judge of the Return before we ſit; and this is now judged according to the poſitive Laws of the Realm by the King, which infringeth not our Liberty, ſince we judge after the Court is ſet, according to Diſcretion.

No Precedent, That any Man was put out of the Houſe for Utlary; therefore it had been fit we ſhould have deſired to inform the King that he was miſinformed.

Let us now leave this particular Caſe to the King, and Conſider and Reſolve of the Material Queſtions that will fall out in the Debate of it. 1. Whether this Court hath Power to take Notice of Returns made before we ſit here? 2. Whether Men Utlawed may be of the Houſe? 3. Whether a Man pardoned, having not ſued forth a Writ of *Scire facias*, may be called in Queſtion? 4. Whether the Writ were returned the 17th of *February*, or no, upon Oath of the Sheriff?

Some others were ſtrong in Opinion, That we ought not to conſer nor to commit ſaying, That Majeſty had conferred with Juſtice; yet Majeſty had left the ſtopping of the Wound to us. We ſhould taint our ſelves with Three great Blemiſhes, if we ſhould alter our Judgment, Levity, Cruelty and Cowardice. There be Three Degrees of Upright Judgment, Motion, Examination, Judgment: All theſe have paſſed us. No Court can reform their own Judgment. Every Day a Term here. Every Act that paſſeth this Houſe, is an Act of Parliament. Shall Juſtice float up and down? Shal he be a Member to day, and ſhall we tear him off to morrow? If the Member be ſound, it is Violence: If the Hand tear the reſt, it is Cruelty. No part torn, but it may bleed to the Ruine of the whole.

Let

Let Sir *Francis Goodwin* ſtand as he is: Duty and Courage may ſtand together; let not the Houſe be inveigled by Suggeſtions. This may be called a *Quo Warranto* to ſeize our Liberties.

There hath been Three Main Objections.

1. The King's Exception. *We could ſhow no Precedent in this kind.*

Anſw. The King could ſhew no ſuch Writ before. Our Hands were never ſought to be cloſed before, nor we prevented. It opens a Gap to thruſt us all into the Petty-Bag. A Chancellor may call a Parliament of what Perſons he will by this Courſe. Any Suggeſtion, by any Perſon, may be Cauſe of ſending a new Writ.

2 *Obj.* by the Lord Chief Juſtice. *By the Law we had nothing to do to Examine Returns.*

Anſw. Judges cannot take Notice of private Cuſtoms or Privileges: But we have a Privilege which ſtands with the Law. The Judges informed the King of the Law, but not of a Caſe of Privilege. It is true, 35 *H.* VI. All the Judges reſolved, That no Outlawed Man ought to be admitted; but that was Controlled by Parliament. It is the ſame Opinion now; let us Controll it as then; we have done no Offence to the State: Let us therefore be conſtant in our own Judgment.

3 *Obj.* Another, *The King's Pleaſure, That we ſhould deliver the Reaſons of that we have done to be juſt.*

If we clear our Contempt, we have diſcharged our ſelves. The *King's Bench* cannot reverſe their Judgment the ſame Term; therefore not the Parliament. Let us ſend a Meſſage to the Lords, That we are ready ſo to do, as we do not undo this Houſe.

Others, *Non Coronabitur qui non legitime certaverit.* Not to be termed a Difference between His Majeſty and the Commons. *Rogamus Auguſte, non pugnamus.* The Queſtion is not of Matter of Privilege, but of Judgment. Let us attend them as Lords of the Council, and not as Lords of Parliament.

We do no ways Conteſt or Contend with His Majeſty. The King is no way bound in Honour. If Writs go forth unduly, they may be Controlled without Impeachment to the King's Honour. It is the Act of his Inferior Officers. It is now come to this Queſtion, **Whether the Chattery of Parliament ought to have Authority?**

Queſt. *Whether we ought to ſatisfy the King in his Commandment?*

The King's Meſſage was, That we ſhould Conſider within our ſelves, and Reſolve of our ſelves; then no need to Confer with the Judges: If we cannot, then it is fit to be Reſolved by the Judges.

The Judges have judged, and we have judged; What need then of Conference? Let there be no Spark of that Grace taken from us, which we have had already from His Majeſty. Let our Reaſons be put into Articles, and delivered in all Humbleneſs unto him. Upon the Concluſion of this Debate in this manner, the Houſe proceeded to Queſtion; and the firſt was.

1. Q. *Whe-*

1. Q. *Whether the Houſe was Reſolved in the Matter?*

And the Queſtion was Anſwered by general Voice, That the whole Houſe was Reſolved.

2. Q. *Whether the Reaſons of their Proceeding ſhall be ſent down in Writing?*

Reſolved, That they ſhall be ſet down in Writing; and Ordered further, That a Committee ſhould be named for that purpoſe, and appointed firſt to ſet them down in Writing, and to bring them to the Houſe, there to be Publiſhed, and to receive their Allowance.

The Committees were inſtantly named, *viz.*

Sir *Robert Wingfield.*
Sir *George Moore.*
Sir *Francis Bacon.*
Mr. *Yelverton.*
Mr. *Dyett.*
Sir *Francis Haſtings.*
Mr. *Hedley.*
Mr. Recorder of *London.*
Sir *Edward Hobby.*
Sir *Francis Barrington.*
Mr. *Wiſeman.*
Mr. *Hyde.*
Mr. *Fuller.*
Sir *Edward Mountague.*
Mr. *Ravenſcroft.*
Sir *William Fleetwood.*
Mr. *Winch.*
Sir *Thomas Challener.*
Mr. Sollicitor.
Sir *Roger Wilbraham.*
Sir *John Thynne.*
Mr. *Martin.*
Sir *Arthur Atye.*
Mr. *Francis Tate.*
Sir *Roland Litton.*
Sir *Henry Nevill.*
Mr. Attorney of the Wards.
Sir *John Hollis.*
Sir *Robert Wroth.*
Sir *John Scott.*
Mr. *Hitcham.*
Sir *Edward Stafford.*
Sir *John Mallory.*
Sir *Herbert Crofts.*
Sir *Francis Fane.*
Sir *Richard Molyneux.*
Sir *John Hangerford.*
Sir *Edward Herbert.*
All the Serjeants at Law.
Mr. *Nath. Bacon.*
Mr. *Hext.*

To meet this Afternoon at Two a Clock in the *Exchequer* Chamber.

The Authority given unto them by the Houſe, was this:

The Houſe being reſolved, upon the Queſtion, That the Reaſons of their precedent Reſolution, touching the Return, Admittance and Retaining of Sir *Francis Goodwin* as a Member of this Houſe, ſhould be ſet down in Writing; theſe Committees were ſpecially appointed to perform that Service, and have Warrant from the Houſe to ſend for any Officer, to View and Search any Record, or other thing of that kind, which may help their Knowledge or Memory in this particular Service: And having deliberately by general Conſent ſet down all ſuch Reaſons, they are to bring them in Writing into the Houſe, there to be Read and Approved, as ſhall be thought fit.

Die Lunæ, viz. 2° *die Aprilis*, 1604.

IT was then moved, That Commttees might be Named to take the Examination of the Sheriff of *Buckinghamſhire*, who was by former Order ſent for, and now come. And to that end were named,

Mr. Sollicitor.
Sir *Robert Wroth.*
Sir *William Fleetwood.*
Sir *Thomas Challener.*
Sir *Robert Wingfield.*
Mr. Serjeant *Tanfield.*
Mr. Serjeant *Lee.*
Mr. *Yelverton.*
Mr. *Francis Moore.*

Who were appointed to take his Examination preſently.

Sir *Charles Cornwallis* moveth in Excuſe of Sir *Francis Goodwin's* Abſence from the Houſe, and prayeth, That they would as well in their own Judgment pardon it, as witneſs and affirm his Care and Modeſty upon all Occaſions to the King, in that he hath forborn, during all the Time of this Queſtion, to come into the Houſe.

The Examination was preſently taken by theſe Committees, and returned in this Form.

Interr. 1. *Why he removed the County from* Aylesbury *to* Brickhill?

He ſaith, It was by reaſon of the Plague being at *Aylesbury*, the County being the 25th of *January*, at which time Three were Dead of the Plague there. This was the only motive of removing his County.

Interr. 2. *Whether he were preſent at the firſt Election?*

Saith, He was preſent, and was faithful to wiſh this ſecond Place to Sir *Francis Goodwin*, as the firſt to Sir *John Forteſcue*; ſent Sir *Francis Goodwin* word, before the Election, he ſhould not need to bring any Freeholders, for the Election he thought would be without ſcruple for them both; firſt to Sir *John*, ſecond to Sir *Francis*. About Eight of the Clock he came to *Brickhill*; was then told by Sir *George Throckmorton*, and others, That the firſt Voice would be given for Sir *Francis*; he anſwered, He hoped it would not be ſo, and deſired every Gentleman to deal with his Freeholders. After Eight of the Clock went to the Election a great number, there being at the County After the Writ read, he firſt intimated the Points of the Proclamation; then jointly propounded Sir *John Forteſcue* and Sir *Francis Goodwin*. The Freeholders cried firſt, a *Goodwin*, a *Goodwin*: Every Juſtice of Peace on the Bench ſaid, a *Forteſcue*, a *Forteſcue*; and came down from the Bench before they named any for a ſecond Place, and deſired the Freeholders to Name Sir *John Forteſcue* for the firſt. Sir *Francis Goodwin* being in a Chamber near, was ſent for by the Sheriff and Juſtices; and he came down and earneſtly perſwaded with the Freeholders, ſaying, Sir *John* was his good Friend, had been his Father's, and that they would not do Sir *John* that Injury: Notwithſtanding the Freeholders would not deſiſt, but all cried, a *Goodwin*, a *Goodwin*, ſome crying, a *Forteſcue*, to the number of 60 or thereabouts, the other

other for Sir *Francis Goodwin*, being about 200 or 300; and Sir *Francis Goodwin*, to his thinking, dealt very plainly and earneſtly in this Matter for Sir *John Forteſcue*; for that Sir *Francis Goodwin* did ſo earneſtly proteſt it unto him.

Inter. 3. *Who laboured him to make the Return ſo long before the Day of the Parliament?*

He being here in *London*, Mr. Attorney-General, the Second of *March*, at his Chamber in the *Inner-Temple*, delivered him Two *Cap. Utlagat.* againſt Sir *Francis Goodwin*; and before he made his Return, he went and adviſed with Mr. Attorney about his Return, who penned it, and ſo it was done by his Direction: And the Return being written, upon *Friday* after the King's coming through *London*, near about my Lord Chancellor's Gate, in the Preſence of Sir *John Forteſcue*, he delivered the Writ to Sir *George Coppin*: And at this Time (it being about Four of the Clock in the Afternoon) and before they parted, Sir *John Forteſcue* delivered him the Second Writ ſealed; Sir *John Forteſcue*, Sir *George Coppin*, and himſelf, being not above an Hour together at that Time, and never had but this New Writ of Parliament to him delivered.

Subſcribed, *Francis Cheyne.*

This was returned by the Committee to the Hands of the Clerk, but not at all read in the Houſe.

Mr. Speaker remembreth the Matter of Conference with the Judges, and offereth to repeat and put again the Queſtions that were formerly made; being before uncertainly and unperfectly left (as he ſaid) in the Caſe of *Buckinghamſhire*, viz.

1. *Whether the Houſe were Reſolved in the Matter?*
2. *Whether they ſhould Confer with the Judges?*

And at length induced the Houſe to entertain the latter Queſtion; and, being made, was carried by general Voice in the Negative, No Conference.

Upon this Paſſage, it was urged for a Rule, That a Queſtion being once made, and carried in the Affirmative or Negative, cannot be queſtioned again; but muſt ſtand as a Judgment of the Houſe.

It was thought fit that Mr. Speaker ſhould attend the Committee for Penning the Reaſons in Sir *Francis Goodwin*'s Caſe, not by Commandment, but Voluntary of himſelf.

Die Martis, viz. 3° *die Aprilis*, 1604.

THE Reaſons of the Proceeding of the Houſe in Sir *Francis Goodwin*'s Caſe, penned by the Committee, were, according to former Order, brought in by Mr. *Francis Moore*, and read by the Clerk, directed in Form of a Petition.

To the KING's Moſt Excellent Majeſty.

The Humble Anſwer of the Commons *Houſe of Parliament to His Majeſty's Objections in Sir* Francis Goodwin's *Caſe.*

MOST Gracious, our Dear and Dread Sovereign, Relation being made to Us by our Speaker, of Your Majeſty's Royal Clemency and Patience in hearing us, and of Your Princely Prudence in diſcerning; ſhewing Affectionate Deſire rather to receive Satisfaction to Clear us, than Cauſe to Pardon us: We do in all Humbleneſs render our moſt bounden Thanks for the ſame; proteſting, by the Bond of our Allegiance, That we never had Thought to offend Your Majeſty; at whoſe Feet we ſhall ever lie proſtrate, with Loyal Hearts, to ſacrifice our ſelves and all we have for Your Majeſty's Service: And in this Particular, we could find no Quiet in our Minds, that would ſuffer us to entertain other Thoughts, until we had Addreſſed our Anſwer to Your Moſt Excellent Majeſty; for which nevertheleſs we have preſumed of the longer Time, in reſpect we have prepared ſome Precedents, requiring Search, to yield Your Majeſty better Satisfaction.

There were objected againſt us, by Your Majeſty and Your Reverend Judges, Four Things, to Impeach our Proceedings, in receiving *Francis Goodwin*, Knight, into our Houſe.

Objection 1ma *The Firſt, That we aſſume to our ſelves Power of Examining of the Elections and Returns of Knights and Burgeſſes, which belonged to Your Majeſty's* Chancery, *and not to us: For that all Returns of Writs were examinable in the Courts wherein they are returnable; and the Parliament-Writs being returnable into the* Chancery, *the Returns of them muſt needs be there examined, and not with us.*

Our Humble Anſwer is, That, until the 7th Year of King *Henry* IV. all Parliament Writs were returnable into the Parliament; as appeareth by many Precedents of Record ready to be ſhewed, and conſequently the Returns there examinable: In which Year a Statute was made, That thenceforth every Parliament-Writ, containing the Day and Place where the Parliament ſhall be holden, ſhould have this Clauſe, *viz. Et Electionem tuam in Pleno Comitatu factam diſtincte & aperte ſub Sigillo tuo & Sigillis eorum qui Electioni illi interfuerint nobis in Cancellariam noſtram ad diem & locum in Brevi content' certifices indilate.*

By this, although the Form of the Writ be ſomewhat altered, yet the Power of the Parliament, to examine and determine of Elections, remaineth; for ſo the Statute hath been always expounded ever ſithence, by Uſe to this Day: And for that Purpoſe, both the Clerk of the Crown hath always uſed to attend, all the Parliament-Time, upon the Commons Houſe, with the Writs and Returns; and alſo the Commons, in the Beginning of every Parliament, have ever uſed to appoint ſpecial Committees, all the Parliament-Time, for examining Controverſies concerning Elections and Returns of Knights and Burgeſſes: During which Time, the Writs and Indentures remain with the Clerk of the Crown; and after the Parliament ended, and not before, are delivered to the Clerk of the Petty-Bag in *Chancery*, to be kept there; which is warranted by Reaſon and Precedents: Reaſon; for that it is fit that the Returns ſhould be in that Place examined, where the Appearance and Service of the Writ is appointed. The Appearance and Service is in Parliament, therefore the Return examinable in Parliament.

Prece-

Precedents: One in the 29th Year of the Reign of the late Queen *Elizabeth*, where, after one Writ awarded into *Norfolk* for Choice of Knights, and Election made and returned, a ſecond was before the Parliament-Day awarded by the Lord Chancellor, and thereupon another Election and Return made; and the Commons being attended with both Writs and Returns by the Clerk of the Crown, examined the Cauſe, allowed the Firſt, and rejected the Second. So *Anno* 23 *Elizabethæ Reginæ*, a Burgeſs was returned dead, and a new choſen, and returned by a new Writ: The Party returned dead appeared; the Commons, notwithſtanding the Sheriff's Return, admitted the Firſt choſen, and rejected the Second. Alſo, the ſaid 23d Year, a Burgeſs choſen for *Hull* was returned Lunatick, and a new choſen upon a Second Writ: The Firſt claimed his Place; the Commons examined the Cauſe, and finding the Return of Lunacy to be true, they refuſed him; but if it had been falſe, they would have received him. *Anno* 43 *Elizabethæ*, the Sheriff of *Rutlandſhire* returned himſelf elected; the Commons finding that he was not eligible by Law, ſent a Warrant to the *Chancery* for a new Writ to chooſe anew. *Anno* 43 *Eliz.* alſo a Burgeſs was choſen Burgeſs for Two Boroughs; the Commons, after he had made Election which he could ſerve for, ſent Warrant to the *Chancery* for a Writ to chooſe a new for the other Borough: Of which kind of Precedents there are many other, wherewith we ſpare to trouble Your Majeſty. All which together, *viz.* Uſe, Reaſon and Precedents, do concur to prove the *Chancery* to be a Place appointed to receive the Returns, as to keep them for the Parliament, but not to judge of them; and the Inconvenience might be great, if the *Chancery* might, upon Suggeſtions or Sheriffs Returns, ſend Writs for new Elections, and thoſe not ſubject to Examination in Parliament: For ſo, when fit Men were choſen by the Counties and Boroughs, the Lord Chancellor, or the Sheriffs, might diſplace them, and ſend out new Writs, until ſome were choſen to their liking; a Thing dangerous in Precedents for the time to come, howſoever we reſt ſecurely from it at this preſent by the now Lord Chancellor's Integrity.

Objectio 2da *That we dealt in the Cauſe with too much Precipitation, not ſeemly for a Council of Gravity, and without Reſpect to Your moſt Excellent Majeſty, our Sovereign, who had directed the Writ to be made; And being but half a Body, and no Court of Record alone, refuſed Conference with the Lords, th' other half, notwithſtanding they prayed it of us.*

Our humble Anſwer is, to the Precipitation, That we entered into this Cauſe, as in other Parliaments of like Caſes hath been accuſtomed, calling to us the Clerk of the Crown, and viewing both the Writs, and both the Returns; which in Caſes of and Motions, though not of Bills requiring Three Readings, hath been Warrant by continual Uſage amongſt us: And thereupon, well finding that the latter Writ was awarded and ſealed before the *Chancery* was repoſſeſſed of the former, which the Clerk of the Crown, and the Sheriff of the County, did both teſtifie, and well held to be a clear Fault in Law, proceeded to Sentence with the leſs Reſpect of the latter Election. For our lack of Reſpect to Your Majeſty, we confeſs, with Grief of our Hearts, we are right ſorry it ſhall be ſo conceived; proteſting, That it was no way made known unto us before that time that Your Majeſty had taken to your ſelf any ſpecial Notice, or directed any Courſe in that Cauſe, other than the ordinary awarding Writs by your Highneſs's Officers in that behalf: But if we had known as much as ſome will have, by Your Majeſty's Royal Mouth, we would not, without Your Majeſty's Privity, have proceeded in that Manner. And further, it may pleaſe Your Majeſty to give us Leave to inform You, That in the Exa-

 mination

mination of the Cauſe the Sheriff avouched unto us, That *Goodwin* agreed to yield the Eirſt Place of the Two Knights to Sir *John Forteſcue*, and in his own Perſon, at the time of Election, with extraordinary Earneſtneſs, entreated the Electors it might ſo be, and cauſed the Indentures to be made up to that purpoſe; but the Electors utterly refuſed to ſeal them. Concerning our refuſing Conference with the Lords, there was none deſired until after our Sentence paſſed; and then we thought, That in a Matter private to our own Houſe, which, by Rules of Order, might not be by us revoked, we might, without any Imputation, refuſe to confer. Yet underſtanding by their Lordſhips, That Your Majeſty had been informed againſt us, we made haſt (as in all Duty we were bound) to lay open to Your Majeſty, our good and gracious Sovereign, the whole Manner of our Proceeding; **not doubting, though we were but part of a Body, as to make new Laws, yet for any Matter of Privileges of our Houſe, but are and ever have been a Court of our ſelves, of ſufficient Power to diſcern and determine without their Lordſhips, as their Lordſhips have uſed always to do for theirs without us.**

Objectio 3^tia *That we have, by our Sentence of receiving* Goodwin, *admitted, That Outlaws may be Makers of Laws; which is contrary to all Laws.*

Our humble Anſwer is, That notwithſtanding the Precedents which we truely delivered, of admitting and retaining Outlaws in Perſonal Actions in the Commons Houſe, and none remitted for that Cauſe; yet we received ſo great Satisfaction, delivered from Your Royal Majeſty's own Mouth, with ſuch excellent Strength and Light of Reaſon, more than before, in that Point, we heard or did conceive, as we forthwith prepared an Act to paſs our Houſe, That all Outlaws henceforth ſhall ſtand diſabled to ſerve in Parliament: But as concerning *Goodwin*'s Particular, it could not appear unto us, having throughly examined all Parts of the Proceedings againſt him, That he ſtood an Outlaw, by the Laws of *England*, at the time of the Election made of him by the County; and that for Two Cauſes: The Firſt is, That where the Party Outlawed ought to be five times proclaimed to appear in the Sheriff's County Court; and then not appearing, ought to be adjudged Outlawed by the Judgment of the Coroners of the County; there appeareth no Record made in the *Huſtings* of *London*, that *Goodwin* was five times proclaimed, or that the Coroners gave Judgment of Outlawry againſt him: But a Clerk lately come to that Office, hath now, many Year after the time, and ſince this Election, made Entries, interlined with a new Hand, that he was Outlawed: To which new Entries we could give no Credit, for that the Parties, at whoſe Suit *Goodwin* was ſued, have teſtified in their Writings of Releaſe, That they never proceeded further than to take out the Writ of *Exigent* for an Outlawry; and being then paid their Money, deſiſted there: By which we find, That *Goodwin* was not five times proclaimed, nor adjudged Outlawed, being a Thing uſual in *London* to ſpare that Proclamation, and Judgment, if the Party call not upon it; and no Record being made for many Years together that either of them was done.

The Second Cauſe was, for that the Writ of *Exigent*, by which the Sheriff was commanded to proclaim him five times, was never lawfully returned, nor certified by *Certiorari*; without which, we take it, That *Goodwin* ſtood not diſabled as an Outlaw.

To this, adding the Two General Pardons by Parliament, which had cleared the Outlawry in Truth and Subſtance, (if any were;) And that *Goodwin* could not apply the Pardons by *Scire fa.* for that no Record nor Return was extant of the Outlawry, whereupon he might ground a *Scire fa.*

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we were of Opinion, and ſo Your Majeſty's moſt Reverend Judges would have been if they had known thus much, That *Goodwin* ſtood not diſabled by Outlawry to be Elected or Serve in Parliament: But when we conſidered further, That the Courſe taken againſt *Goodwin* for drawing him into this Outlawry of purpoſe to diſable him to Serve in this Place, whereto the County had freely Elected him, was unuſual; we could not with the Reputation of our Places, ſerving as a Council of Gravity, in Allowance or Continuance of that Courſe, cenſure him to be rejected as an Outlaw: The Particulars of which were theſe, *viz.*

Two Exigents awarded, the other Seven Years paſt to the *Huſtings* in *London*; No Entry made of Five Proclamations; nor of any Judgment of the Coroners; nor any Return of the Exigents made or endorſed; the Party Plaintiff ſatisfied; the pretended Outlawries being but upon mean Proceſs: And as to Your Majeſty's Duties and Contempts pardoned now ſince *Goodwin* was Elected Knight, the Exigent now ſought out ſince the Election procured to be returned in the Name of the Sheriffs that then were, and are long ſince Dead, and new Entry made of the Five Proclamations and Coroner's Judgment; and now a Return made of that old Exigent, which could be of no uſe, but only for a purpoſe to diſable him for that Place. Upon all which we could do no leſs in true Diſcretion than certifie the Election made *Secundum equum & bonum.*

Objectio 4ta. *That we proceeded to examine the Truth of the Fact of Outlawry, and gave our Sentence upon that; whereas we ought to have been bound by the Sheriff's Return of the Outlawry from further Examining, Whether the Party were Outlawed or Not.*

Our humble Anſwer is, That the Precedents cited before, in our Anſwer to the firſt Objection, do prove the uſe of the Commons Houſe to Examine *Veritatem facti in Elections*, and Returns, and have not been tied peremptorily to allow the Return; as if a Knight or Burgeſs be untruly Returned Dead, or Lunatick, yet when he appeareth to the Houſe to be Living and Sound, they have, contrary to the Return, received him into the Houſe, preferring the Truth manifeſt before the Return. By which diſcreet Proceeding there is avoided that great Inconvenience abovementioned of giving liberty to Sheriffs, by untrue Returns, to make and remove whom they liſt, to and from the Parliament Service, how Meet ſoever the Parties be in the Judgment of the County or Borough that Elected them.

Thus in all Humility we have preſented to Your Moſt Excellent Majeſty the Grounds and Reaſons of our late Action, led with no Affections, but guided by Truth, warranted in our Conſciences, imitating Precedents, maintaining our Antient Privileges, honouring Your Excellent Majeſty in all our Services; to which in all Loyalty and Devotion we Bind us, and ours for ever, praying daily on the Knees of our Hearts, to the Majeſty of th' Almightye, that Your Majeſty and Your Poſterity may in all Felicity Reign over us and ours to the end of the World.

Theſe Reaſons ſo ſet down and publiſhed to the Houſe, Mr. Secretary *Herbert* was ſent with Meſſage to the Lords, That the Houſe had Reſolved of their Anſwer to His Majeſty, (in Sir *Francis Goodwin*'s Caſe) and had ſet it down in Writing, and that it ſhould be ſent to their Lordſhips before Four of the Clock in the Afternoon; who immediately returned their Lordſhip's Anſwer, That they wou'd be ready at that time in the *Council-Chamber* at *Whitehall*, with Thirty of the Lords, to receive what then ſhou'd be delivered. Then were named Threeſcore to attend the Delivery of the ſaid Reaſons at the Time and Place aforeſaid. *Eodem*

Eodem die Poſt Meridiem.

THe Houſe entering ſeriouſly into Conſultation what Courſe was to be held with the Lords; as alſo falling into more length of Diſputation, touching the Bill of Merchants, then were expected, ſent ſome Meſſengers to the Lords to excuſe their long tarrying, *viz.*

Sir *Edward Hobby.*
Sir *Ro. Wilbraham.*
Sir *Henry Nevell.*
Sir *Francis Haſtings.*
Mr. *Martyn.*

This Afternoon about Five a Clock, the Committee appointed did attend to deliver the Reaſons aforeſaid, at the *Council-Chamber*, according to Appointment and Order of both Houſes; and they were delivered by Sir *Francis Bacon*, one of the Committees, with deſire, That their Lordſhips would be Mediators in the behalf of the Houſe, for his Majeſty's Satisfaction.

Die Mercurii, viz. 4° *die Aprilis*, 1604.

SIR *Francis Bacon* having the Day before delivered to the Lords in the *Council-Chamber* at *Whitehall*, (according to the Direction of the Houſe) the Reaſons in Writing Penn'd by the Committee touching Sir *Francis Goodwin's* Caſe, maketh Report of what paſſed at the time of the ſaid Delivery.

Firſt, That though the Committees imployed were a number ſpecially deputed and ſelected; yet that the Lords admitted all Burgeſſes without Diſtinction; That they offered it with Teſtimony of their own Speed and Care in the Buſineſs, ſo as they ſaid no one thing had Precedency, but only the Bill of Recognition; That they had ſuch reſpect to the Weight of it, as they had not committed it to any frailty of Memory, or verbal Relation, but put it into Writing for more permanent Memory of their Duty and Reſpect to His Majeſty's Grace and Favour: That in Concluſion they *prayed their Lordſhips, ſithence they had nearer Acceſs, they would Co-operate with them for the King's Satisfaction*; and ſo delivered the Writing to the Hands of the Lord Chancellor, who receiving it, demanded, Whether they ſhou'd ſend it to the K[illegible], or firſt peruſe it? To which was anſwer'd, That ſince it was the King's Pleaſure they ſhou'd concur, they deſired their Lordſhips would firſt peruſe it. The Lord Cancil demanded, Whether they had Warrant to Amplifie, Explain, or Debate any Doubt or Queſtion made upon the Reading? To which it was ſaid, They had no Warrant. And ſo the Writing was read, and no more done at that time.

Die Jovis, viz. 5to die Aprilis, 1604.

MR. Speaker by a private Commandment attended the King this Morning at Eight a Clock, and there ſtaid till Ten.

Mr. Speaker excuſeth his Abſence, by reaſon he was commanded to attend upon his Majeſty. And bringeth Meſſage from his Majeſty to this Effect. That the King had received a Parchment from the Houſe. Whether it were an Abſolute Reſolution, or Reaſon to give him Satisfaction, he knew not: He thought it was rather intended for his Satisfaction. His Majeſty proteſted, by that Love he bare to the Houſe as his Loving and Loyal Subjects, and by the Faith he did ever owe to God, he had as great a Deſire to Maintain their Privileges, as ever any Prince had, or as themſelves. He had ſeen and conſidered of the Manner and the Matter; He had heard his *Judges* and *Council*; and that he was now diſtracted in Judgment. Therefore, for his further Satisfaction, he deſired, and commanded *as an Abſolute King*, that there might be a Conference between the Houſe and the Judges; and that for that purpoſe there might be a Select Committee of Grave and Learned Perſons out of the Houſe: That his Council might be preſent, *not as Umpires to determine, but to Report indifferently on both ſides.*

Upon this Unexpected Meſſage there grew ſome Amazement and Silence. But at laſt One ſtood up and ſaid: The Prince's Command is like a Thunder-bolt; His Command upon Our Allegiance like the Roaring of a Lyon. To his Command there is no Contradiction; But how, or in what manner we ſhould now proceed to perform Obedience, that will be the Queſtion.

Another anſwered, Let Us petition to His Majeſty, that he will be pleaſed to be preſent, to hear, moderate, and judge the *Caſe* Himſelf. Whereupon Mr. Speaker proceeded to this Queſtion.

Q. Whether to Confer with the Judges in the Preſence of the King and Council?

Which was reſolved in the Affirmative.

And a Select Committee preſently named for the Conference, *viz.*

Lawyers.	Gentlemen.
Mr. Serjeant *Tanfield.*	Sir *Geo. Carew*, Vice-Chamberlain to the Queen.
Mr. Serjeant *Hubard.*	Sir *Francis Haſtings.*
Mr. Serjeant *Leigh.*	Sir *Edw. Hobby.*
Mr. Serjeant *Shirley.*	Sir *Robert Wroth.*
Mr. Serjeant *Dodridge.*	Sir *Henry Nevill.*
Sir *Thomas Hesketh.*	Sir *John Savile.*
Sir *Francis Bacon.*	Sir *Geo. Moore.*
Mr. Recorder of *London.*	

Lawyers.	Gentlemen.
Mr. *Yelverton.*	Mr. *Nathanael Bacon.*
Mr. *Crewe.*	Sir *Edward Stafford.*
Mr. *Laurence Hyde.*	Sir *William Fleetwood.*
Mr. *Francis Moore.*	Sir *Thomas Challoner.*
Mr. *Richard Martyn.*	Sir *Roger Aſton.*
Mr. *Winche.*	Sir *Robert Wingfield.*
Mr. *Dyett.*	Sir *Edward Mountague.*
Mr. *Fuller.*	Sir *Edwyn Sandys.*
Sir *Roger Wilbraham.*	Sir *Robert Cotton.*
Mr. *Francis Tate.*	
Mr. Doctor *James.*	
Sir *Daniel Dunn.*	
Sir *John Bennet.*	

Theſe Committees were ſelected and appointed to Confer with the Judges of the Law, touching the Reaſons of Proceeding in Sir *Francis Goodwyn*'s Caſe, ſet down in Writing, and deliver'd to His Majeſty in the preſence of the Lords of His Majeſty's Council, according to His Highneſs Pleaſure ſignifyed by Mr. Speaker this day to the *Houſe*.

It was further Reſolved and Ordered by the Houſe, (upon the Motion to that end by Mr. *Laurence Hyde*) That the aforeſaid Committees ſhould inſiſt upon the Fortification, and Explaining of the Reaſons and Anſwers delivered unto His Majeſty; and not proceed to any other Argument or Anſwer, what Occaſion ſoever moved in the time of that Debate.

Die Mercurii, viz. 11mo *die Aprilis*, 1604.

Upon Adjournment.

SIR *Francis Bacon* was expected, and called to make a Report of the late Conference with the Judges in the Preſence of His Majeſty and the Lords of the Council: But he made Excuſe, ſaying, he was not Warranted to make any Report; and *tantum permiſſum quantum commiſſum*: Nevertheleſs, upon a Queſtion, he was over-ruled to make a Report; and a Motion thereupon made, That the Committees might firſt Aſſemble in the Court of Wards, and Confer amongſt themſelves, and then the Report to be made.

Sir *Francis Bacon*, after the Meeting of the Committees in the Court of Wards, reporteth what had paſſed in Conference in the preſence of his Majeſty and his Council.

THE King ſaid, He would be Preſident himſelf. This Attendance renewed the remembrance of the laſt, when we departed with ſuch Admiration. It was the Voice of God in Man: The good Spirit of God in the Mouth of Man. I do not ſay, The Voice of God, and not of Man. I am not one of *Herod*'s Flatterers. A Curſe fell upon him that ſaid it. A Curſe on him that ſuffered it. We might ſay as was ſaid to *Solo-*

mon,

ſpoken, We are glad, O King, that we give Account to you, becauſe you diſcern what is ſpoken.

We let paſs no Moment of Time, until we had reſolved and ſet down an Anſwer in Writing, which we now had ready.

That ſithence we received a Meſſage from his Majeſty by Mr. Speaker, of Two Parts. 1. The one Paternal. 2. The other Royal. 1. That we were as dear unto him as the Safety of his Perſon, or the Preſervation of his Poſterity. 2. Royal, That we ſhould Confer with his Judges, and that in the Preſence of himſelf and his Council. That we did more now to King James than ever was done ſince the Conqueſt, in giving Account of our Judgments. That we had no intent in all our Proceedings, to encounter his Majeſty, or to impeach his Honour or Prerogative.

This was ſpoken by way of Preamble by him you employed.

How to Report his Majeſty's Speeches; he knew the Eloquence of a King was unimitable.

The King addreſs'd himſelf to him as deputed by the Houſe, and ſaid he would make Three Parts of what he had to ſay. The Cauſe of the Meeting was to draw to an end the Difference in Sir *Francis Goodwyn*'s Caſe.

If they required his Abſence, he was ready; becauſe he feared he might be thought intereſted, and ſo breed an inequality on their part.

He ſaid, That he would not hold his Prerogative or Honour, or receive any thing of any or all his Subjects. This was his Magnanimity.

That he would confirm and ratify all juſt Privileges. This his Bounty and Amity. As a King Royally. As King *James*, ſweetly and kindly out of his good Nature.

One Point was, Whether we were a Court of Record, and had Power to Judge of Returns. As our Court had Power, ſo had the *Chancery*; and that the Court that firſt had paſſed their Judgment ſhould not be Controuled.

Upon a Surmiſe, and upon the Sheriffs Return, there grew a Difference.

That there Two Powers. 1. Permanent: The other, Tranſitory. That *the* Chancery *was a Confidenciary Court to the uſe of the Parliament during the time.*

Whatſoever the Sheriff inſerts beyond the Authority of his Mandate, a Nugation. The Parliaments of *England* not to be bound by a Sheriff's Return.

That our Privileges were not in Queſtion. That it was private Jealouſies without any Kernel or Subſtance. He granted it was a Court of Record, and a Judge of Returns. He moved, That neither Sir *John Forteſcue*, nor Sir *Francis Goodwyn* might have Place; Sir *John* loſing Place, His Majeſty did meet us half-way. That when there did ariſe a Schiſm in the Church between a Pope and an Antipope, there could be no end of the Difference until they were both put down.

Upon this Report a Motion was made, That it might be done by way of Warrant; and therein to be Inſerted, That it was done at the Requeſt of the King: And was further ſaid, (as Anciently it hath been ſaid) That we loſe more at a Parliament than we gain at a Battel. That the Authority of the Committee was only to fortify what was agreed on by the Houſe for Anſwer, and that they had no Authority to Conſent.

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It was further Moved, by another, That we ſhould proceed to take away our Diſſention, and to preſerve our Liberties; And ſaid, That in this we had exceeded our Commiſſion; and that we had drawn upon us a Note of Inconſtancy and Levity.

But the Acclamation of the Houſe, was, That it was a Teſtimony of our Duty, and no Levity.

So as the Queſtion was preſently made;

Queſt. Whether Sir *John Forteſcue* and Sir *Francis Goodwyn* ſhall both be Secluded, and a Warrant for a New Writ directed. And upon the Queſtion, reſolved, That a Writ ſhould iſſue for a New Choice, and a Warrant directed accordingly.

A Motion made, That Thanks ſhould be preſented by Mr. Speaker to His Majeſty, for his Preſence and Direction in this Matter; and thereupon Ordered, That his Majeſty's Pleaſure ſhould be known by Sir *Roger Aſton* for their Attendance accordingly.

Becauſe it had been conceived by ſome, that Sir *Francis Goodwyn* being the Member ſpecially intereſted, it were fit he ſhould give Teſtimony of his Liking and Obedience in this Courſe; Being dealt withal to that end, he writ his Letter to Mr. Speaker; which, before this Queſtion made, for better Satisfaction of the Houſe, was read in theſe Words.

SIR,

I Am heartily ſorry to have been the leaſt Occaſion either of Queſtion between his Majeſty and that Honourable Houſe, or of Interruption to thoſe Worthy and Weighty Cauſes, which by this time, in all likelihood, had been in very good furtherance: Wherefore underſtanding very credibly, that it pleaſed his Majeſty, when the Committees laſt attended him, to take Courſe with them for a Third Writ and Election for the Knightſhip of the County of Buckingham; *I am ſo far from giving any Impediment thereunto, that contrariwiſe, I humbly deſire his Majeſty's Direction in that behalf to be accompliſhed and performed. So praying you, according to ſuch Opportunity as will be minſtred, to give furtherance thereunto, I take my Leave, and reſt*

Weſt. *this* 11*th of* April, 1604.

Yours, Moſt Aſſured to be Commanded,

Fra. Goodwyn.

Directed, *To the Right Worſhipful Sir* Edward Phelips, *Knight, Speaker of the Honourable Court of Parliament.*

Da

Die Jovis, viz. xii°. *Die Aprih.*

A Motion made, That Mr. Speaker, in Behalf of the Houſe, ſhould Pray Acceſs to his Majeſty, and Preſent their Humble Thanks for his Gracious Preſence and Direction, upon the Hearing of Sir *Francis Goodwyn*'s Cauſe; which was aſſented unto; and Sir *Roger Aſton*, a Servant of his Majeſty's Bed-Chamber, and one of the Members of the Houſe, was preſently appointed to know his Majeſty's Pleaſure; which he did accordingly; and returned, That his Majeſty was willing to give them Acceſs in the Gallery at *Whitehall*, at Two a Clock in the Afternoon, the ſame Day. Thereupon a Committee was Named to attend Mr. Speaker to the King, with a General Warrant to all Others that ſhould be pleaſed to Accompany them.

The Committee, Specially Named, were,

All the Privy Council of the Houſe.
Sir *George Carew*, Vice-Chamberlain to the Queen.
The Lord *Buckhurſt*.
Sir *John Heigham*.
Sir *Robert Oxenbridge*.
Sir *William Fleetwood*.
Sir *Edwyn Sandys*.
Sir *John Hollys*.
Mr. *John Sheffeild*.
Sir *Francis Haſtings*.
Sir *George Moore*.
Sir *Robert Wingfeild*.
Sir *William Killigrew*.
Sir *Francis Popham*.
Mr. *Francis Clifford*.
Sir *John Savill*.
Sir *Richard Verney*.
Mr. *Toby Matthews*.
Sir *Thomas Ridgeway*.
Sir *Jonathan Trelawny*.
Sir *John Scott*.
Mr. *Edw. Seymour*.
Sir *Tho. Holcroft*.
Sir *Henry Nevill*.
Sir *Tho. Walſingham*.
Sir *Tho. Benſon*.
Sir *Francis Barrington*.
Sir *Robert Nappier*.
Sir *Valentine Knightley*.
Sir *George Carew*, Maſter of the *Chancery*.
Sir *Jerome Bowes*.
Sir *John Thynne*.
Sir *John Leveſon*.
Sir *William Burlacye*.
Sir *Roger Aſton*.
Sir *Robert Moore*.
Mr. *Dudley Carleton*.
Sir *William Wray*.
Sir *George St. Poll*.

Die Veneris, viz. xiii°. *Die April.* 1604.

MR. Speaker returneth to the Houſe the Effect of his Meſſage of Thanks, Delivered the Laſt Day in the Name of the Houſe to his Majeſty; as alſo of his Majeſty's Anſwer, *viz.*

That he related to this Houſe the Humble and Dutiful Acceptation of what his Majeſty had done, together with the humble Thanks of the Houſe for his Zealous and Paternal Delivery of his Grace unto Us, by

his own Mouth: What Wonder they conceived in his Judgment, what Joy in his Grace, what Comfort they had in his Juſtice, what Approbation they made of his Prudence, and what Obedience they yielded to his Power and Pleaſure.

That his Direction gave all Men Satisfaction. That they were determined to purſue the Courſe he had preſcribed. That now they were become Suitors, he would be pleaſed to receive a Repreſentation of the humble Thanks and Service of the Houſe.

His Majeſty anſwered, That upon this Second Acceſs, he was forced to reiterate what he had ſaid before. That this Queſtion was unhappily caſt upon him, for he carried as great a reſpect to Our Privileges as ever any Prince did; he was no Ground-Searcher; he was of the Mind that our Privileges was his Strength: That he thought the ground of our Proceeding, was our not underſtanding that he had intermeddled before We had decided: That he thought alſo We had no wilful purpoſe to derogate any thing from him, for Our Anſwer was a grave, dutiful, and obedient Anſwer.

But as the Devil had unhappily caſt this Queſtion between them, ſo he ſaw God had turned it to two good Ends and Purpoſes.

1. One, That he knew, and had approved our Loyalty.
2. Another, That he had ſo good an Occaſion to make Teſtimony of his Bounty and Grace.

That as we came to give him Thanks, ſo did he redouble his Thanks to Us.

That he had rather be a King of his Subjects, than to be a King of many Kingdoms.

The Second part of his Speech directed to the Lords and Us.

That this Parliament was not like to be long: That We would treat of ſuch Matters as moſt concerned the Commonwealth; and the laſt, of any thing that concerned himſelf.

Three main Buſineſſes in Our Hands.

1. The Union.
2. Sundry Publick and Commonwealth-Bills.
3. Matter of Religion, and Reformation of Eccleſiaſtical Diſcipline.

For the Union, that it might be now prepared, and proſecuted the next Seſſion.

That Union, which with the loſs of much Blood could never be brought to paſs, as now it is. That the better to bring it to paſs, We ſhould be in Affections united.

That We ſhould firſt with all Care proceed in ſuch Laws as might concern the general Good.

That all Hereſies and Schiſms might be rooted out, and care taken to plant and ſettle God's true Religion and Diſcipline in the Church.

That this Wiſh above all things, was at his Death to leave,

1. One Worſhip to God.
   One Kingdom entirely Governed.
   One Uniformity in Laws.

Laſtly, That his Occaſions were Infinite, and much beyond thoſe of his Predeceſſors; and therefore that in this firſt Parliament We would not take from him that which We had yielded to Others.

That in his Affections he was no way Inferior to others, nor in his Deſire to eaſe Us.

The Warrant for a New Election of a Knight for *Bucks*, Read and Allowed in this Form:

Whereas the Right Honourable Sir John Forteſcue, *Knight, Chancellor of his Majeſty's Dutchy of* Lancaſter, *and Sir* Francis Goodwyn, *Knight, have been ſeverally Elected and Returned Knights of the Shire for the County of* Bucks, *to ſerve in this preſent Parliament: Upon deliberate Conſultation, and for ſome Special Cauſes moving the Commons Houſe of Parliament, It is this Day Ordered and Required by the ſaid Houſe, That a Writ be forthwith Awarded for a New Election of another Knight for the ſaid Shire; And this ſhall be your Warrant.*

Directed, *To my very Loving Friend, Sir* George Coppin, *Knight, Clerk of the Crown in His Majeſty's High Court of Chancery.*

BY *Virtue of an Order of the* Houſe of Commons, *I do Appoint* Edward Jones *and* Timothy Goodwin *to Print all the Proceedings in Relation to the* Aylesbury *Men Committed by the* Houſe of Commons, *and the Report of the* Lords Journal, *and Reports of the* Conferences, *and of the* Free Conference. *Together with what ſtands upon the* Journal *of the* Houſe of Commons *in the Reign of King* James I. *in the Caſe between Sir* Francis Goodwyn *and Sir* John Forteſcue; *And that no other Perſon preſume to Print the ſame.*

RO. HARLEY, *Speaker.*

NOTA, THat the Declaration of *Paty* in Page 7, relates to the Election of Members to ſerve in the Parliament called in the 12th Year of His late Majeſty's Reign, and the Declarations of *Oviat*, *Paton*, *Baſſe* and *Horne*, mentioned in Page 9, relate to the Election of Members to ſerve in the Parliament called in the Firſt Year of Her preſent Majeſties Reign.

ERRATA.

PAge 41. *Line* 3. *for* affects *r.* aſſerts. *l. ult. for* Houſes *r.* Houſe. *P.* 42. *l.* 17. *for* Freedom *r.* Freehold. *l.* 46. *for* the *r.* that. *P.* 44. *l.* 47. *for* this *r.* the. *P.* 47. *l. antepenult. for* Precedents *r.* Precedent. *P.* 48. *l.* 5. *after* of, *add* a. *l.* 14. *r.* to Magna Charta. *P.* 54. *l.* 8. *after* Right *r.* at.

ADVERTISEMENT.

THere is newly publiſhed a true Liſt of the Lords Spiritual and Temporal, together with the Knights, Citizens and Burgeſſes, of the Parliament which met at *Weſtminſter* the 20th of *October*, 1702. as they were Returned into the Office of the Clerk of the Crown in Chancery; with the ſeveral Alterations ſince made, to this time. Printed for *Edward Jones* and *Timothy Goodwin*.

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